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**FINANCIAL INSTITUTIONS SUPERVISORY
AND INSURANCE ACT OF 1966**

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HEARINGS
BEFORE THE
COMMITTEE ON BANKING AND CURRENCY
HOUSE OF REPRESENTATIVES
EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

S. 3158

(Superseded by H.R. 17899)

**TO STRENGTHEN THE REGULATORY AND SUPERVISORY
AUTHORITY OF FEDERAL AGENCIES OVER INSURED
BANKS AND INSURED SAVINGS AND LOAN ASSOCIATIONS,
AND FOR OTHER PURPOSES**

AND

S. 3695

(Superseded by H.R. 18021)

**TO AMEND THE SMALL BUSINESS INVESTMENT ACT OF
1958, AND FOR OTHER PURPOSES**

SEPTEMBER 15, 20, AND 22, 1966

Printed for the use of the Committee on Banking and Currency



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FINANCIAL INSTITUTIONS SUPERVISORY AND INSURANCE ACT OF 1966

THURSDAY, SEPTEMBER 15, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Wright Patman (chairman) presiding.

Present: Representatives Patman, Reuss, Ashley, Gonzalez, Hanna, Gettys, Hansen, Fino, Harvey, Brock, Clawson, Stanton, and Mize.

The CHAIRMAN. The committee will please come to order.

This morning the committee hears testimony on two very important bills to broaden Federal supervisory authority over financial institutions.

S. 3158 is a Senate passed bill which would provide so-called "intermediate" powers over federally insured savings and loan associations and federally insured banks. It is similar to H.R. 14159 introduced in the House by the chairman.

This new authority is called intermediate because it would provide administrative remedies short of termination of share account or deposit insurance. It is suggested that the supervisory agencies need more flexibility—flexibility that this bill would provide.

Much the same can be said for S. 3695 which is similar to H.R. 16934, introduced by the chairman in the House. It, too, has passed the Senate, and it would give the Small Business Administration broadened authority to supervise small business investment companies licensed under the Small Business Investment Act of 1958.

(The bills, S. 3158 and S. 3695, and agency reports on S. 3158 follow:)

[S. 3158, 89th Cong., 2d sess.]

AN ACT To strengthen the regulatory and supervisory authority of Federal agencies over insured banks and insured savings and loan associations, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Financial Institutions Supervisory Act of 1966".

TITLE I—PROVISIONS RELATING TO THE FEDERAL HOME LOAN BANK BOARD AND THE FEDERAL SAVINGS AND LOAN INSURANCE COR- PORATION

SEC. 101. Subsection (d) of section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464(d)) is hereby amended to read as follows:

"(d)(1) The Board shall have power to enforce this section and rules and regulations made hereunder. In the enforcement of any provision of this section or rules and regulations made hereunder, or any other law or regulation, or in

any other action, suit, or proceeding to which it is a party or in which it is interested, and in the administration of conservatorships and receiverships, the Board is authorized to act in its own name and through its own attorneys. Except as otherwise provided herein, the Board shall be subject to suit (other than suits on claims for money damages) by any Federal savings and loan association or director or officer thereof with respect to any matter under this section or any other applicable law, or rules or regulations thereunder, in the United States district court for the judicial district in which the home office of the association is located, or in the United States District Court for the District of Columbia, and the Board may be served with process in the manner prescribed by the Federal Rules of Civil Procedure.

"(2) (A) If, in the opinion of the Board, an association is violating or has violated, or the Board has reasonable cause to believe that the association is about to violate, a law, rule, regulation, or charter or other condition imposed in writing by the Board or written agreement entered into with the Board, or is engaging or has engaged, or the Board has reasonable cause to believe that the association is about to engage, in an unsafe or unsound practice, the Board may issue and serve upon the association a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the association. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Board at the request of the association. Unless the association shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Board may issue and serve upon the association an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the association and its directors, officers, employees, and agents to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

"(B) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the association concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

"(3) (A) Whenever the Board shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the association pursuant to paragraph (2) (A) of this subsection, or the continuation thereof, is likely to cause insolvency (as defined in paragraph (6) (A) (i) of this subsection) or substantial dissipation of assets or earnings of the association, or is likely to otherwise seriously prejudice the interests of its savings account holders, the Board may issue a temporary order requiring the association to cease and desist from any such violation or practice. Such order shall become effective upon service upon the association and, unless set aside, limited, or suspended by a court in proceedings authorized by subparagraph (B) of this paragraph, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Board shall dismiss the charges specified in such notice or, if a cease-and-desist order is issued against the association, until the effective date of any such order.

"(B) Within ten days after the association concerned has been served with a temporary cease-and-desist order, the association may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the association under paragraph (2) (A) of this subsection, and such court shall have jurisdiction to issue such injunction.

"(C) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Board may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

"(4) (A) Whenever, in the opinion of the Board, any director or officer of an association has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the association, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Board determines that the association has suffered or will probably suffer substantial financial loss or other damage or that the interests of its savings account holders could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the Board may serve upon such director or officer a written notice of its intention to remove him from office.

"(B) Whenever, in the opinion of the Board, any director or officer of an association, by conduct or practice with respect to another savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer, and, whenever, in the opinion of the Board, any other person participating in the conduct of the affairs of an association, by conduct or practice with respect to such association or other savings and loan association or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such association, the Board may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such association.

"(C) In respect to any director or officer of an association or any other person referred to in subparagraph (A) or (B) of this paragraph, the Board may, if it deems it necessary for the protection of the association or the interests of its savings account holders, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the association. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subparagraph (E) of this paragraph, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subparagraph (A) or (B) of this paragraph and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the association of which he is a director or officer or in the conduct of whose affairs he has participated.

"(D) A notice of intention to remove a director, officer, or other person, from office and/or to prohibit his participation in the conduct of the affairs of an association, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Board at the request of (i) such director, officer, or other person, and for good cause shown, or (ii) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Board shall find that any of the grounds specified in such notice has been established, the Board may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the association, as it may deem appropriate. Any such order shall become effective at the expiration of

thirty days after service upon such association and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Board or a reviewing court.

"(E) Within ten days after any director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs, of an association under subparagraph (C) of this paragraph, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the association is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subparagraph (A) or (B) of this paragraph, and such court shall have jurisdiction to stay such suspension and/or prohibition.

"(5) (A) Whenever any director or officer of an association, or other person participating in the conduct of the affairs of such association, is charged in any information, indictment, or complaint authorized by a United States Attorney, with the commission of or participation in a felony involving industry or breach of trust, the Board may, by written notice served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the association. A copy of such notice shall also be served upon the association. Such suspension and/or prohibition shall remain in effect until such information indictment, or complaint is finally disposed of or until terminated by the Board. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Board may issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the association except with the consent of the Board. A copy of such order shall be served upon such association, whereupon such director or officer shall cease to be a director or officer of such association. A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in association affairs, pursuant to subparagraph (A) or (B) of paragraph (4) of this subsection.

"(B) If at any time, because of the suspension of one or more directors pursuant to this subsection (d), there shall be on the board of directors of an association less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the Board and not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of an association are suspended pursuant to this subsection (d), the Board shall appoint persons to serve temporarily as directors in their place and stand pending the termination of such suspensions, or until such time as those who have been suspended cease to be directors of the association and their respective successors take office.

"(6) (A) The grounds for the appointment of a conservator or receiver for an association shall be one or more of the following: (i) insolvency in that the assets of the association are less than its obligations to its creditors and others, including its members; (ii) substantial dissipation of assets or earnings due to any violation or violations of law, rules, or regulations, or to any unsafe or unsound practice or practices; (iii) an unsafe or unsound condition to transact business; (iv) willful violation of a cease-and-desist order which has become final; (v) concealment of books, papers, records, or assets of the association or refusal to submit books, papers, records, or affairs of the association for inspection to any examiner or to any lawful agent of the Board. The Board shall have exclusive power and jurisdiction to appoint a conservator or receiver. If, in the opinion of the Board, a ground for the appointment of a conservator or receiver as herein provided exists, the Board is authorized to appoint ex parte and without notice a conservator or receiver for the association. In the event of such appointment, the association may, within thirty days thereafter, bring an action in the United States district court for the judicial district in which the home office of such association is

located, or in the United States District Court for the District of Columbia, for an order requiring the Board to remove such conservator or receiver, and the court shall upon the merits dismiss such action or direct the Board to remove such conservator or receiver. Such proceedings shall be given precedence over other cases pending in such courts, and shall be in every way expedited. Upon the commencement of such an action, the court having jurisdiction of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

"(B) In addition to the foregoing provisions, the Board may, without any requirement of notice, hearing, or other action, appoint a conservator or receiver for an association in the event that (i) the association, by resolution of its board of directors or of its members, consents to such appointment, or (ii) the association is removed from membership in any Federal home loan bank, or its status as an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation is terminated.

"(C) Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver, or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a conservator or receiver.

"(D) A conservator shall have all the powers of the members, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Board. The Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for an association, and said Corporation shall have power to buy at its own sale as receiver, subject to approval by the Board. The Board may, without any requirement of notice, hearing, or other action, replace a conservator with another conservator or with a receiver, but any such replacement shall not affect any right which the association may have to obtain judicial review of the original appointment, except that any removal under this paragraph (6) shall be removal of the conservator or receiver in office at the time of such removal.

"(7) (A) Any hearing provided for in this subsection (d) shall be held in the Federal judicial district or in the territory in which the home office of the association is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of the Administrative Procedure Act; but such hearing shall be private, unless a public hearing is agreed to by the party afforded the hearing and by the Board. After such hearing, and within ninety days after the Board has notified the parties that the case has been submitted to it for final decision, the Board shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this subsection. Judicial review of any such order shall be exclusively as provided in this paragraph (7). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in subparagraph (B) of this paragraph, and thereafter until the record in the proceeding has been filed as so provided, the Board may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Board may modify, terminate, or set aside any such order with permission of the court.

"(B) Any party to the proceeding, or any person required by an order issued under this subsection to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served pursuant to subparagraph (A) of this paragraph (other than an order issued with the consent of the association or the director or officer or other person concerned, or an order issued under paragraph (5) (A) of this subsection), by filing in the court of appeals of the United States for the circuit in which the home office of the association is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Board be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the Board shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code.

Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said subparagraph (A) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Board. Review of such proceedings shall be had as provided in the Administrative Procedure Act. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28 of the United States Code.

"(C) The commencement of proceedings for judicial review under subparagraph (B) of this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Board.

"(8) The Board may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the association is located, for the enforcement of any effective and outstanding notice or order issued by the Board under this subsection (d), and such courts shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this subsection no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this subsection, or to review, modify, suspend, terminate, or set aside any such notice or order. Any court having jurisdiction of any proceeding instituted under this subsection by an association or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the association or from its assets.

"(9) In the course of or in connection with any proceeding under this subsection, the Board or any member thereof or a designated representative of the Board, including any person designated to conduct any hearing under this subsection, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and the Board is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this paragraph may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to proceedings under this subsection may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this paragraph, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this paragraph shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Board or of the Federal Savings and Loan Insurance Corporation in connection with this subsection shall be considered as nonadministrative expenses.

"(10) Any service required or authorized to be made by the Board under this subsection may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Board may by regulation or otherwise provide.

"(11) The Board shall have power to make rules and regulations for the reorganization, consolidation, liquidation, and dissolution of associations, for the merger of associations with other institutions the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, for associations in conservatorship and receivership, and for the conduct of conservatorships and receiverships; and the Board may, by regulation or otherwise, provide for the exercise of functions by members, directors, or officers of an association during conservatorship and receivership.

"(12) (A) Any director or officer, or former director or officer, of an association, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under paragraph (4) (C), (4) (D), or (5) (A) of this subsection, and who (i) participates in any manner in the conduct of the affairs of such association, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect of any voting rights in such association, or (ii) without the prior written approval of the Board, votes for a director or serves or

acts as a director, officer, or employee of any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, shall upon conviction be fined not more than \$5,000 or imprisoned for not more than one year, or both.

"(B) Except with the prior written consent of the Board, no person shall serve as a director, officer, or employee of an association who has been convicted, or who is hereafter convicted, of a criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the association involved shall be subject to a penalty of not more than \$100 for each day this prohibition is violated, which the Board may recover by suit or otherwise for its own use.

"(C) Whenever a conservator or receiver appointed by the Board demands possession of the property, business, and assets of any association, or of any part thereof, the refusal by any director, officer, employee, or agent of such association to comply with the demand shall be punishable by a fine of not more than \$5,000 or imprisonment for not more than one year, or both.

"(13) (A) As used in this subsection—

"(1) The terms 'cease-and-desist order which has become final' and 'order which has become final' mean a cease-and-desist order, or an order, issued by the Board with the consent of the association or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Board has been filed and perfected in a court of appeals as specified in paragraph (7) (B) of this subsection, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under paragraph (5) (A) of this subsection.

"(2) The term 'territory' includes the Commonwealth of Puerto Rico, and any possession of the United States or any place subject to the jurisdiction of the United States.

"(B) As used in paragraph (4) of this subsection, the term 'violation' includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(14) As used in this subsection, the terms 'Federal savings and loan association' and 'association' shall include any institution with respect to which the Federal Home Loan Bank Board now or hereafter has any statutory power of examination or supervision under any Act or joint resolution of Congress other than this Act, the Federal Home Loan Bank Act, and the National Housing Act. For the purposes of this paragraph (14), references in this subsection to directors, employees, and agents, or to former directors or officers, of associations shall be deemed to be references respectively to directors, officers, employees, and agents, or to former directors or officers, of such institutions, references therein to savings account holders and to members of associations shall be deemed to be references to holders of withdrawable accounts in such institutions, and references therein to boards of directors of associations shall be deemed to be references to board of directors or other governing boards of such institutions. Said Board shall have power by regulation to define, for the purposes of this paragraph (14), terms used or referred to in the sentence next preceding and other terms used in this subsection.

"(15) The provisions of this subsection, as amended by the amendment by which this sentence is added, shall not be applicable to or with respect to any proceeding for the appointment of a conservator or receiver pending immediately prior to the effective date of said amendment or any conservator or receiver appointed as a result of such proceeding, or to or with respect to any supervisory representative in charge, conservator, or receiver in office immediately prior to said date, or any successor of any of the same, or to the appointment of any such successor, and the provisions of this subsection as in effect immediately prior to said date shall be and remain applicable to all of the foregoing."

SEC. 102. Section 407 of the National Housing Act (12 U.S.C. 1730) is hereby amended to read as follows:

"SEC. 407. TERMINATION OF INSURANCE AND ENFORCEMENT PROVISIONS.—

"(a) VOLUNTARY TERMINATION OF INSURANCE.—Any insured institution other than a Federal savings and loan association may terminate its status as an insured institution by written notice to the Corporation specifying a date for such termination.

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"(b) **INVOLUNTARY TERMINATION OF INSURANCE; NOTICE AND HEARING.**—(1) Whenever, in the opinion of the Corporation, any insured institution has violated its duty as such or is engaging or has engaged in an unsafe or unsound practice in conducting the business of such institution, or is in an unsafe or unsound condition to continue operations as an insured institution, or is violating or has violated an applicable law, rule, regulation, or order, or any condition imposed in writing by the Corporation or any written agreement entered into with the Corporation, including any agreement entered into under section 403 of this title, the Corporation shall serve upon the institution a statement with respect to such violations or practices or conditions for the purpose of securing the correction thereof, and shall send a copy of such statement to the appropriate State supervisory authority.

"(2) Unless such correction shall be made within one hundred and twenty days after service of such statement, or such shorter period of not less than twenty days after such service as (A) the Corporation shall require in any case where the Corporation determines that its insurance risk with respect to such institution could be unduly jeopardized by further delay in the correction of such violations or practices or conditions, or (B) the appropriate State supervisory authority shall require, or unless within such time the Corporation shall have received acceptable assurances that such correction will be made within a time and in a manner satisfactory to the Corporation, or in the event such assurances are submitted to and accepted by the Corporation but are not carried out in accordance with their terms, the Corporation may, if it shall determine to proceed further, issue and serve upon the institution written notice of intention to terminate the status of the institution as an insured institution.

"(3) Such notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices or condition, and shall fix a time and place for a hearing thereon. Such hearing shall be fixed for a date not earlier than thirty days after service of such notice. Unless the institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured institution. In the event of such consent, or if upon the record made at any such hearing the Corporation shall find that any violation or unsafe or unsound practice or condition specified in such notice has been established and has not been corrected within the time above prescribed in which to make correction, the Corporation may issue and serve upon the institution an order terminating the status of the institution as an insured institution; but any such order shall not become effective until it is an order which has become final (except in the case of an order of termination issued upon consent, which shall become effective at the time specified therein).

"(c) **DATE OF TERMINATION OF INSURED STATUS.**—The effective date of the termination of an institution's status as an insured institution under the foregoing provisions of this section shall be the date specified for such termination in the notice by the institution to the Corporation as provided in subsection (a) of this section, or the date upon which an order of termination issued under subsection (b) (3) of this section becomes effective. The Corporation may from time to time postpone the effective date of the termination of an institution's status as an insured institution at any time before such termination has become effective, but in the case of termination by notice given by the institution such effective date shall be postponed only with the written consent of the institution.

"(d) **CONTINUATION OF INSURANCE; EXAMINATION; NOTICE TO MEMBERS; AND PAYMENT OF PREMIUMS.**—In the event of the termination of an institution's status as an insured institution, insurance of its accounts to the extent that they were insured on the effective date of such termination as hereinabove provided in subsection (c), less any amounts thereafter withdrawn, repurchased, or redeemed, shall continue for a period of two years, but no investments or deposits made after such date shall be insured. The Corporation shall have the right to examine such institution from time to time during the two-year period aforesaid. Such insured institution shall be obligated to pay, within thirty days after the effective date of such termination, as a final insurance premium, a sum equivalent to twice the last annual insurance premium payable by it. In the event of the termination of insurance of accounts as herein provided the institution which was the insured institution shall give prompt and reasonable notice to all of its insured members that it has ceased to be an insured institution and it may include in such notice the fact that insured accounts, to the extent not with-

drawn, repurchased, or redeemed, remain insured for two years from the date of such termination, but it shall not further represent itself in any manner as an insured institution. In the event of failure to give the notice to insured members as herein provided the Corporation is authorized to give reasonable notice.

"(e) **CEASE-AND-DESIST PROCEEDINGS.**—(1) If, in the opinion of the Corporation, any insured institution or any institution any of the accounts of which are insured is engaging or has engaged, or the Corporation has reasonable cause to believe that the institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Corporation has reasonable cause to believe that the institution is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Corporation or written agreement entered into with the Corporation, including any agreement entered into under section 403 of this title, the Corporation may issue and serve upon the institution a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the Corporation at the request of the institution. Unless the institution shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing the Corporation shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Corporation may issue and serve upon the institution an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the institution and its directors, officers, employees, and agents to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

"(2) A cease-and-desist order shall become effective at the expiration of thirty days after service of such order upon the institution concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Corporation or a reviewing court.

"(f) **TEMPORARY CEASE-AND-DESIST ORDERS.**—(1) Whenever the Corporation shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution pursuant to subsection (e) (1) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to otherwise seriously prejudice the interest of its insured members or of the Corporation, the Corporation may issue a temporary order requiring the institution to cease and desist from any such violation or practice. Such order shall become effective upon service upon the institution and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Corporation shall dismiss the charges specified in such notice or, if a cease-and-desist order is issued against the institution, until the effective date of any such order.

"(2) Within ten days after the institution concerned has been served with a temporary cease-and-desist order, the institution may apply to the United States district court for the judicial district in which the principal office of the institution is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution under subsection (e) (1) of this section, and such court shall have jurisdiction to issue such injunction.

"(3) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order, the Corporation may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the institution is located, for an

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injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

"(g) **SUSPENSION OR REMOVAL OF DIRECTOR OR OFFICER.**—(1) Whenever, in the opinion of the Corporation, any director or officer of an insured institution has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the institution, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Corporation determines that the institution has suffered or will probably suffer substantial loss or other damage or that the interests of its insured members could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the Corporation may serve upon such director or officer a written notice of its intention to remove him from office.

"(2) Whenever, in the opinion of the Corporation, any director or officer of an insured institution, by conduct or practice with respect to another insured institution or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer, and, whenever, in the opinion of the Corporation, any other person participating in the conduct of the affairs of an insured institution, by conduct or practice with respect to such institution or other insured institution or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such insured institution, the Corporation may serve upon such director, officer or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of such institution.

"(3) In respect to any director or officer of an insured institution or any other person referred to in paragraph (1) or (2) of this subsection, the Corporation may, if it deems it necessary for the protection of the institution or the interests of its insured members or of the Corporation, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the institution. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by paragraph (5) of this subsection, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (2) of this subsection and until such time as the Corporation shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the institution of which he is a director or officer or in the conduct of whose affairs he has participated.

"(4) A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Corporation at the request of (A) such director, officer, or other person and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Corporation shall find that any of the grounds specified in such notice has been established, the Corporation may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the institution, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such institution and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall

remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Corporation or a reviewing court.

"(5) Within ten days after any director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured institution under paragraph (3) of this subsection, such director, officer, or other person may apply to the United States district court for the judicial district in which the principal office of the institution is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under paragraph (1) or (2) of this subsection, and such court shall have jurisdiction to stay such suspension and/or prohibition.

"(h) SUSPENSION OF DIRECTOR OR OFFICER CHARGED WITH FELONY.—Whenever any director or officer of an insured institution, or other person participating in the conduct of the affairs of such institution, is charged in any information, indictment, or complaint authorized by a United States Attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Corporation may, by written notice served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the institution. A copy of such notice shall also be served upon the institution. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Corporation. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the Corporation may issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the institution except with the consent of the Corporation. A copy of such order shall also be served upon such institution, whereupon such director or officer shall cease to be a director or officer of such institution. A finding of not guilty or other disposition of the charge shall not preclude the Corporation from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in institution affairs, pursuant to paragraph (1) or (2) of subsection (g) of this section.

"(i) TERMINATION OF FEDERAL HOME LOAN BANK MEMBERSHIP.—Termination under this section or otherwise of the status of an institution as an insured institution shall automatically constitute a removal under subsection (1) of section 6 of the Federal Home Loan Bank Act of the institution from Federal home loan bank membership, if at the time of such termination such institution is a member of a Federal home loan bank; and removal of an institution from Federal home loan bank membership under subsection (1) of section 6 of the Federal Home Loan Bank Act or otherwise shall automatically constitute an order of termination under this section of the status of such institution as an insured institution, if such institution is at the time of such removal an insured institution.

"(j) HEARINGS AND JUDICIAL REVIEW.—(1) Any hearing provided for in this section shall be held in the Federal judicial district or in the territory in which the principal office of the institution is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of the Administrative Procedure Act; but such hearing shall be private, unless a public hearing is agreed to by the party afforded the hearing and by the Corporation. After such hearing, and within ninety days after the Corporation has notified the parties that the case has been submitted to it for final decision, the Corporation shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Corporation may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Corporation may modify, terminate, or set aside any such order with permission of the court.

"(2) Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the institution or the director or officer or other person concerned, or an order issued under subsection (h) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the institution is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order a written petition praying that the order of the Corporation be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Corporation, and thereupon the Corporation shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Corporation. Review of such proceedings shall be had as provided in the Administrative Procedure Act. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28 of the United States Code.

"(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Corporation.

"(k) JURISDICTION AND ENFORCEMENT.—(1) Notwithstanding any other provision of law, (A) the Corporation shall be deemed to be an agency of the United States within the meaning of section 451 of title 28 of the United States Code; (B) any civil action, suit, or proceeding to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and (C) the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district and division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect: *Provided*, That any action, suit, or proceeding to which the Corporation is a party in its capacity as conservator, receiver, or other legal custodian of an insured State-chartered institution and which involves only the rights or obligations of investors, creditors, stockholders, and such institution under State law shall not be deemed to arise under the laws of the United States. No attachment or execution shall be issued against the Corporation or its property before final judgment in any action, suit, or proceeding in any court of any State or of the United States or any territory, or any other court.

"(2) The Corporation may, in its discretion, apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the principal office of the institution is located, for the enforcement of any effective and outstanding notice or order issued by the Corporation under this section, and such courts shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

"(1) REPORTING REQUIREMENTS.—(1) Whenever a change occurs in the outstanding voting stock of any insured institution which will result in control or a change in the control of such institution, the president or other chief executive officer of such institution shall promptly report such facts to the Corporation upon obtaining knowledge of such change. As used in this subsection, the term 'control' means the power to directly or indirectly direct or cause the direction of the management or policies of the insured institution. If there is any doubt as to whether a change in ownership or other change in the outstanding voting stock of any insured institution is sufficient to result in control or a change in the control thereof, such doubt shall be resolved in favor of reporting the facts to the Corporation.

"(2) Whenever an insured institution or an insured bank of the Federal Deposit Insurance Corporation makes a loan or loans secured (or to be secured) by 25 per centum or more of the voting stock of an insured institution, the president

or other chief executive officer of the lending insured institution or insured bank shall promptly report such fact to the Corporation upon obtaining knowledge of such loan or loans, except that no report need be made in those cases where the borrower has been the owner of record of the stock for a period of one year or more, or the stock is of a newly organized insured institution prior to its opening.

"(3) The reports required by paragraphs (1) and (2) of this subsection shall contain the following information to the extent that it is known by the person making the report: (A) the number of shares involved, (B) the names of the sellers (or transferors), (C) the names of the purchasers (or transferees), (D) the names of the beneficial owners if the shares are of record in another name or other names, (E) the purchase price, (F) the total number of shares owned by the sellers (or transferors), the purchasers (or transferees) and the beneficial owners both immediately before and after the transaction, and in the case of a loan, (G) the name of the borrower, (H) the amount of the loan, and (I) the name of the institution issuing the stock securing the loan and the number of shares securing the loan. In addition to the foregoing, such reports shall contain such other information as may be available to inform the Corporation of the effect of the transaction upon control of the institution whose stock is involved. The reports required by this subsection shall be in addition to any reports that may be required pursuant to other provisions of law.

"(4) Whenever such a change as is described in paragraph (1) of this subsection occurs, the insured institution involved shall report promptly to the Corporation any change or changes, or replacement or replacements, of its chief executive officer or of any director occurring in the next twelve-month period, including in its report a statement of the past and current business and professional affiliations of the new chief executive officer or director.

"(5) Without limitation by or on the foregoing provisions of this subsection, the Corporation may require insured institutions and individuals or other persons who have or have had any connection with the management of any insured institution, as defined by the Corporation, to provide, in such manner and under such civil penalties (which shall be cumulative to any other remedies) as the Corporation may prescribe, such periodic or other reports and disclosures as the Corporation may determine to be necessary or appropriate for the protection of investors or the Corporation.

"(6) As used in this subsection, the term 'stock' means such stock or other equity securities or equity interests in an insured institution, or rights, interests, or powers with respect thereto, regardless of whether such institution is a stock company, a mutual institution, or otherwise, as the Corporation may by regulation define for the purposes of this subsection.

"(m) ANCILLARY PROVISIONS.—(1) In making examinations of insured institutions, examiners appointed by the Federal Home Loan Bank Board shall have power, on behalf of the Corporation, to make such examinations of the affairs of all affiliates of such institutions as shall be necessary to disclose fully the relations between such institutions and their affiliates and the effect of such relations upon such institutions. The cost of examinations of such affiliates shall be assessed against and paid by the institution. For purposes of this subsection, the term 'affiliate' shall have the same meaning as where used in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(b)), except that the term 'member bank' in said section 2(b) shall be deemed to refer to an insured institution.

"(2) In connection with examinations of insured institutions and affiliates thereof, the Corporation, or its designated representatives, shall have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such institution or affiliate thereof, and to issue subpoenas and subpoenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the principal office of the institution or affiliate thereof is located, or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

"(3) In the course of or in connection with any proceeding under this section, the Corporation or its designated representatives, including any person designated to conduct any hearing under this section, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and the Corporation is empowered to make rules and regulations with respect to any such pro-

ceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this subsection shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. All expenses of the Board or of the Federal Savings and Loan Insurance Corporation in connection with this section shall be considered as non-administrative expenses. Any court having jurisdiction of any proceeding instituted under this section by an insured institution, or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the institution or from its assets.

"(n) SERVICE.—Any service required or authorized to be made by the Corporation under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the Corporation may by regulation or otherwise provide. Copies of any notice or order served by the Corporation upon any State-chartered institution or any director or officer thereof or other person participating in the conduct of its affairs, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

"(o) NOTICE TO STATE AUTHORITIES.—In connection with any proceeding under subsection (e), (f) (1), or (g) of this section involving an insured State-chartered institution or any director or officer or other person participating in the conduct of its affairs, the Corporation shall provide the appropriate State supervisory authority with notice of the Corporation's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Corporation deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of the State supervisory authority, the Corporation may proceed as provided in this section: *Provided, however,* That no institution or other party who is the subject of any notice or order issued by the Corporation under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

"(p) PENALTIES.—(1) Any director or officer or former director or officer, of an insured institution or an institution any of the accounts of which are insured, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsection (g) (3), (g) (4), or (h) of this section, and who (A) participates in any manner in the conduct of the affairs of such institution, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote any proxies, consents, or authorizations in respect to any voting rights in such institution, or (B) without the prior written approval of the Corporation, votes for a director or serves or acts as a director, officer, or employee of any insured institution, shall upon conviction be fined not more than \$5,000 or imprisoned for not more than one year, or both.

"(2) Except with the prior written consent of the Corporation, no person shall serve as a director, officer, or employee of an insured institution who has been convicted, or who is hereafter convicted, of a criminal offense involving dishonesty or a breach of trust. For each willful violation of this prohibition, the institution involved shall be subject to a penalty of not more than \$100 for each day this prohibition is violated, which the Corporation may recover by suit or otherwise for its own use.

"(q) DEFINITIONS.—(1) As used in this section—

"(A) The terms 'cease-and-desist order which has become final' and 'order which has become final' mean a cease-and-desist order, or an order, issued by the Corporation with the consent of the institution or the director or officer or other person concerned, or with respect to which no petition for review of the action of the Corporation has been filed and perfected in a

court of appeals as specified in subsection (j) (2) of this section, or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said subsection, or an order issued under subsection (h) of this section.

"(B) The term 'territory' includes the Commonwealth of Puerto Rico, and any possession of the United States or any place subject to the jurisdiction of the United States.

"(2) As used in subsection (f) of this section, the term 'insolvency' means that the assets of an institution are less than its obligations to its creditors and others, including its members.

"(3) As used in subsection (g) of this section, the term 'violation' includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation."

TITLE II—PROVISION RELATING TO THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, AND THE COMPTROLLER OF THE CURRENCY

SEC. 201. Paragraph (6) of subsection (j) of section 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) (6) is repealed and section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) is amended by adding the following new subsection (q) :

"(q) The term 'appropriate Federal banking agency' shall mean (a) the Comptroller of the Currency in the case of a national banking association or a District bank, (b) the Board of Governors of the Federal Reserve System in the case of a State member insured bank (except a District bank), and (c) the Federal Deposit Insurance Corporation in the case of a State nonmember insured bank (except a District bank)."

SEC. 202. Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), is amended by redesignating subsections (b), (c), and (d) thereof as (o), (p), and (q) and by adding after subsection (a) thereof the following new subsections (b) through (n), inclusive:

"(b) (1) If, in the opinion of the appropriate Federal banking agency, any insured bank or bank which has insured deposits is engaging or has engaged, or the agency has reasonable cause to believe that the bank is about to engage, in an unsafe or unsound practice in conducting the business of such bank, or is violating or has violated, or the agency has reasonable cause to believe that the bank is about to violate, a law, rule, or regulation, or any condition imposed in writing by the agency or any written agreement entered into with the agency, the agency may issue and serve upon the bank a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist therefrom should issue against the bank. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by the agency at the request of the bank. Unless the bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the issuance of the cease-and-desist order. In the event of such consent, or if upon the record made at any such hearing, the agency shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the agency may issue and serve upon the bank an order to cease and desist from any such violation or practice. Such order may, by provisions which may be mandatory or otherwise, require the bank and its directors, officers, employees, and agents to cease and desist from the same, and, further, to take affirmative action to correct the conditions resulting from any such violation or practice.

"(2) A cease-and-desist order shall become effective at the expiration of thirty days after the service of such order upon the bank concerned (except in the case of a cease-and-desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable, as provided therein, except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

"(c) (1) Whenever the appropriate Federal banking agency shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the bank pursuant to paragraph (1) of subsection (b) of this section, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to otherwise seriously prejudice the interests of its depositors, the agency may issue a temporary order requiring the bank to cease and desist from any such violation or practice. Such order shall become effective upon service upon the bank and, unless set aside, limited, or suspended by a court in proceedings authorized by paragraph (2) of this subsection, shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the agency shall dismiss the charges specified in such notice, or if a cease-and-desist order is issued against the bank, until the effective date of any such order.

"(2) Within ten days after the bank concerned has been served with a temporary cease-and-desist order, the bank may apply to the United States district court for the judicial district in which the home office of the bank is located, or the United States District Court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such order pending the completion of the administrative proceedings pursuant to the notice of charges served upon the bank under paragraph (1) of subsection (b) of this section, and such court shall have jurisdiction to issue such injunction.

"(d) In the case of violation or threatened violation of, or failure to obey, a temporary cease-and-desist order issued pursuant to paragraph (1) of subsection (c) of this section, the appropriate Federal banking agency may apply in the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the bank is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

"(e) (1) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured State bank (other than a District bank) has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the agency determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the agency may serve upon such director or officer a written notice of its intention to remove him from office.

"(2) Whenever, in the opinion of the Comptroller of the Currency, any director or officer of a national banking association or a District bank has committed any violation of law, rule, or regulation, or of a cease-and-desist order which has become final, or has engaged or participated in any unsafe or unsound practice in connection with the bank, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Comptroller determines that the bank has suffered or will probably suffer substantial financial loss or other damage or that the interests of its depositors could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the Comptroller of the Currency may certify the facts to the Board of Governors of the Federal Reserve System.

"(3) Whenever, in the opinion of the appropriate Federal banking agency, any director or officer of an insured State bank (other than a District bank), by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer and, whenever, in the opinion of the appropriate Federal banking agency, any other person participating in the conduct of the affairs of an insured State bank (other than a District bank), by conduct or practice with respect to such bank or other

insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such insured bank, the agency may serve upon such director, officer, or other person a written notice of its intention to remove him from office and/or to prohibit his further participation in any manner in the conduct of the affairs of the bank.

"(4) Whenever, in the opinion of the Comptroller of the Currency, any director or officer of a national banking association or a District bank, by conduct or practice with respect to another insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to continue as a director or officer and, whenever, in the opinion of the Comptroller, any other person participating in the conduct of the affairs of a national banking association or a District bank, by conduct or practice with respect to such bank or other insured bank or other business institution which resulted in substantial financial loss or other damage, has evidenced his personal dishonesty and unfitness to participate in the conduct of the affairs of such bank, the Comptroller of the Currency may certify the facts to the Board of Governors of the Federal Reserve System.

"(5) In respect to any director or officer of an insured State bank (other than a District bank) or any other person referred to in paragraph (1) or (3) of this subsection, the appropriate Federal banking agency may, if it deems it necessary for the protection of the bank or the interests of its depositors, by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under paragraph (1) or (3) of this subsection and until such time as the agency shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated.

"(6) In respect to any director or officer of a national banking association or a District bank, or any other person referred to in paragraph (2) or (4) of this subsection, the Comptroller of the Currency may, if he deems it necessary for the protection of the bank or the interests of its depositors that such director or officer be suspended from office or prohibited from further participation in any manner in the conduct of the affairs of the bank, certify the facts to the Board of Governors of the Federal Reserve System.

"(7) In the case of a certification to the Board of Governors of the Federal Reserve System under paragraph (2) or (4) of this subsection, the Board may serve upon the director, officer, or other person involved, a written notice of its intention to remove him from office and/or to prohibit him from further participation in any manner in the conduct of the affairs of the bank. In the case of a certification to the Board of Governors of the Federal Reserve System under paragraph (6) of this subsection, the Board may by written notice to such effect served upon such director, officer, or other person, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (f) of this section, shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under the first sentence of this paragraph and until such time as the Board shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer or other person, until the effective date of any such order. Copies of any such notice shall also be served upon the bank of which he is a director or officer or in the conduct of whose affairs he has participated. For the purposes of this paragraph and paragraph (8) of this subsection, the Comptroller of the Currency shall be entitled in any case involving a national bank or a District bank to sit as a member of the Board of Governors of the Federal Reserve System and to participate in its deliberations on any such case and to vote thereon in all respects as a member of such Board.

"(8) A notice of intention to remove a director, officer, or other person from office and/or to prohibit his participation in the conduct of the affairs of an insured bank, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the agency at the request of (A) such director or officer or other person, and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the agency shall find that any of the grounds specified in such notice has been established, the agency may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the bank, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such bank and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the agency or a reviewing court.

"(f) Within ten days after any director, officer, or other person has been suspended from office and/or prohibited from participation in the conduct of the affairs of an insured bank under subsection (e) (5) or (e) (7) of this section, such director, officer, or other person may apply to the United States district court for the judicial district in which the home office of the bank is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director, officer, or other person under subsection (e) (1), (e) (3), or (e) (7) of this section, and such court shall have jurisdiction to stay such suspension and/or prohibition.

"(g) (1) Whenever any director or officer of an insured bank, or other person participating in the conduct of the affairs of such bank, is charged in any information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the appropriate Federal banking agency may, by written notice served upon such director, officer, or other person suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the bank. A copy of such notice shall also be served upon the bank. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the agency. In the event that a judgment of conviction with respect to such offense is entered against such director, officer, or other person, and at such time as such judgment is not subject to further appellate review, the agency may issue and serve upon such director, officer, or other person an order removing him from office and/or prohibiting him from further participation in any manner in the conduct of the affairs of the bank except with the consent of the appropriate agency. A copy of such order shall also be served upon such bank, whereupon such director or officer shall cease to be a director or officer of such bank. A finding of not guilty or other disposition of the charge shall not preclude the agency from thereafter instituting proceedings to remove such director, officer, or other person from office and/or to prohibit further participation in bank affairs, pursuant to paragraph (1), (2), (3), (4), or (7) of subsection (e) of this section.

"(2) If at any time, because of the suspension of one or more directors pursuant to this section, there shall be on the board of directors of a national bank less than a quorum of directors not so suspended, all powers and functions vested in or exercisable by such board shall vest in and be exercisable by the director or directors on the board not so suspended, until such time as there shall be a quorum of the board of directors. In the event all of the directors of a national bank are suspended pursuant to this section, the Comptroller of the Currency shall appoint persons to serve temporarily as directors in their place and stead pending the termination of such suspensions, or until such time as those who have been suspended, cease to be directors of the bank and their respective successors take office.

"(h) (1) Any hearing provided for in this section shall be held in the Federal judicial district or in the territory in which the home office of the bank is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of the Administrative Procedure Act; but such hearing shall be private, unless a public hearing is agreed to by the party afforded the hearing and by the appropriate Federal banking agency. After such hearing, and within ninety days after the appropriate Federal banking agency or Board of Governors of the Federal Reserve System has notified the parties that the case has been submitted to it for final decision, it shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and serve upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection (h). Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the issuing agency may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the agency may modify, terminate, or set aside any such order with permission of the court.

"(2) Any party to the proceeding, or any person required by an order issued under this section to cease and desist from any of the violations or practices stated therein, may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the bank or the director or officer or other person concerned, or an order issued under paragraph (1) of subsection (g) of this section) by the filing in the court of appeals of the United States for the circuit in which the home office of the bank is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the agency be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the agency, and thereupon the agency shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall except as provided in the last sentence of said paragraph (1) be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the agency. Review of such proceedings shall be had as provided in the Administrative Procedure Act. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari, as provided in section 1254 of title 28 of the United States Code.

"(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the agency.

"(i) The appropriate Federal banking agency may in its discretion apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the bank is located; for the enforcement of any effective and outstanding notice or order issued under this section, and such courts shall have jurisdiction and power to order and require compliance therewith; but except as otherwise provided in this section no court shall have jurisdiction to affect by injunction or otherwise the issuance or enforcement of any notice or order under this section, or to review, modify, suspend, terminate, or set aside any such notice or order.

"(j) Any director or officer, or former director or officer of an insured bank, or any other person, against whom there is outstanding and effective any notice or order (which is an order which has become final) served upon such director, officer, or other person under subsections (e) (5), (e) (7), (e) (8), or (g) of this section, and (i) participates in any manner in the conduct of the affairs of the bank involved, or directly or indirectly solicits or procures, or transfers or attempts to transfer, or votes or attempts to vote, any proxies, consents, or authorizations in respect of any voting rights in such bank, or (ii) without the prior written approval of the appropriate Federal banking agency, votes for a director, serves or acts as a director, officer, or employee of any bank, shall upon conviction be fined not more than \$5,000 or imprisoned for not more than one year, or both.

"(k) As used in this section (1) the terms 'cease-and-desist order which has become final' and 'order which has become final' mean a cease-and-desist order, or an order, issued by the appropriate Federal banking agency with the consent of the bank or the director or officer or other person concerned, or with respect to which no petition for review of the action of the agency has been filed and perfected in a court of appeals as specified in paragraph (2) of subsection (h), or with respect to which the action of the court in which said petition is so filed is not subject to further review by the Supreme Court of the United States in proceedings provided for in said paragraph, or an order issued under paragraph (1) of subsection (g) of this section, and (2) the term 'violation' includes without limitation any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

"(l) Any service required or authorized to be made by the appropriate Federal banking agency under this section may be made by registered mail, or in such other manner reasonably calculated to give actual notice as the agency may by regulation or otherwise provide. Copies of any notice or order served by the agency upon any State bank or any director or officer thereof or other person participating in the conduct of its affairs, pursuant to the provisions of this section, shall also be sent to the appropriate State supervisory authority.

"(m) In connection with any proceeding under subsection (b), (c) (1), or (e) of this section involving an insured State bank or any director or officer or other person participating in the conduct of its affairs, the appropriate Federal banking agency shall provide the appropriate State supervisory authority with notice of the agency's intent to institute such a proceeding and the grounds therefor. Unless within such time as the Federal banking agency deems appropriate in the light of the circumstances of the case (which time must be specified in the notice prescribed in the preceding sentence) satisfactory corrective action is effectuated by action of the State supervisory authority, the agency may proceed as provided in this section: *Provided, however*, That no bank or other party who is the subject of any notice or order issued by the agency under this section shall have standing to raise the requirements of this subsection as ground for attacking the validity of any such notice or order.

"(n) In the course of or in connection with any proceeding under this section, the agency conducting the proceeding, or any member or designated representative thereof, including any person designated to conduct any hearing under this section, shall have the power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum; and such agency is empowered to make rules and regulations with respect to any such proceedings. The attendance of witnesses and the production of documents provided for in this subsection may be required from any place in any State or in any territory or other place subject to the jurisdiction of the United States at any designated place where such proceeding is being conducted. Any party to proceedings under this section may apply to the United States District Court for the District of Columbia, or the United States district court for the judicial district or the United States court in any territory in which such proceeding is being conducted, or where the witness resides or carries on business, for enforcement of any subpoena or subpoena duces tecum issued pursuant to this subsection, and such courts shall have jurisdiction and power to order and require compliance therewith. Witnesses subpoenaed under this section shall be paid the same fees and mileage that are paid witnesses in the district courts of the United States. Any court having jurisdiction of any proceeding instituted under this section by an insured bank or a director or officer thereof, may allow to any such party such reasonable expenses and attorneys' fees as it deems just and proper; and such expenses and fees shall be paid by the bank or from its assets."

Sec. 203. Subsections (b) and (c) of section 10 of the Federal Deposit Insurance Act (12 U.S.C. 1820 (b), (c)) are amended to read as follows:

"(b) The Board of Directors shall appoint examiners who shall have power, on behalf of the Corporation, to examine any insured State nonmember bank (except a District bank), any State nonmember bank making application to become an insured bank, and any closed insured bank, whenever in the judgment of the Board of Directors an examination of the bank is necessary. In addition to the examinations provided for in the preceding sentence, such examiners shall have like power to make a special examination of any State member bank and any

national bank or District bank, whenever in the judgment of the Board of Directors such special examination is necessary to determine the condition of any such bank for insurance purposes. In making examinations of insured banks, examiners appointed by the Corporation shall have power on behalf of the Corporation to make such examinations of the affairs of all affiliates of such banks as shall be necessary to disclose fully the relations between such banks and their affiliates and the effect of such relations upon such banks. Each examiner shall have power to make a thorough examination of all of the affairs of the bank and its affiliates, and shall make a full and detailed report of the condition of the bank to the Corporation. The Board of Directors in like manner shall appoint claim agents who shall have power to investigate and examine all claims for insured deposits. Each claim agent shall have power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect to claims for insured deposits, and to issue subpoenas and subpoenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the main office of the bank or affiliate thereof is located, or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpoena.

"(c) In connection with examinations of insured banks, and affiliates thereof, the appropriate Federal banking agency, or its designated representatives, shall have the power to administer oaths and affirmations and to examine and to take and preserve testimony under oath as to any matter in respect of the affairs or ownership of any such bank or affiliate thereof, and to issue subpoenas and subpoenas duces tecum, and, for the enforcement thereof, to apply to the United States district court for the judicial district or the United States court in any territory in which the main office of the bank or affiliate thereof is located, or in which the witness resides or carries on business. Such courts shall have jurisdiction and power to order and require compliance with any such subpoena. For purposes of this section, the term 'affiliate' shall have the same meaning as where used in section 2(b) of the Banking Act of 1933 (12 U.S.C. 221a(b)) except that the term 'member bank' in said section 2(b) shall be deemed to refer to an insured bank."

SEC. 204. The first five sentences of section 8(a) of the Federal Deposit Insurance Act (12 U.S.C. 1818(a)) are amended to read as follows:

"SEC. 8. (a) Any insured bank (except a national member bank or State member bank) may, upon not less than ninety days' written notice to the Corporation, terminate its status as an insured bank. Whenever the Board of Directors shall find that an insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank, or is in an unsafe or unsound condition to continue operations as an insured bank, or violated an applicable law, rule, regulation or order, or any condition imposed in writing by the Corporation or any written agreement entered into with the Corporation, the Board of Directors shall first give to the Comptroller of the Currency in the case of a national bank or a District bank, to the authority having supervision of the bank in the case of a State bank, and to the Board of Governors of the Federal Reserve System in the case of a State member bank, a statement with respect to such practices or violations for the purpose of securing the correction thereof and shall give a copy thereof to the bank. Unless such correction shall be made within one hundred and twenty days, or such shorter period not less than twenty days fixed by the Corporation in any case where the Board of Directors in its discretion has determined that the insurance risk of the Corporation is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or the State authority in the case of a State bank, or Board of Governors of the Federal Reserve System in the case of a State member bank as the case may be, the Board of Directors, if it shall determine to proceed further, shall give to the bank not less than thirty days' written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. If the Board of Directors shall find that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time above prescribed in which to make such corrections, the Board of Directors may

order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in such notice of intention. Unless the bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured bank and termination of such status thereupon may be ordered. Any insured bank whose insured status has been terminated by order of the Board of Directors under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (h) of this section."

Sec. 205. Subsection "Fourth" of section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819 "Fourth") is amended to read as follows:

"Fourth. To sue and be sued, complain and defend, in any court of law or equity, State or Federal. All suits of a civil nature at common law or in equity to which the Corporation shall be a party shall be deemed to arise under the laws of the United States, and the United States district courts shall have original jurisdiction thereof, without regard to the amount in controversy; and the Corporation may, without bond or security, remove any such action, suit, or proceeding from a State court to the United States district court for the district or division embracing the place where the same is pending by following any procedure for removal now or hereafter in effect: *Provided*, That any such suit to which the Corporation is a party in its capacity as receiver of a State bank and which involves only the rights or obligations of depositors, creditors, stockholders, and such State bank under State law shall not be deemed to arise under the laws of the United States. No attachments or execution shall be issued against the Corporation or its property before final judgment in any suit, action, or proceeding in any State, county, municipal, or United States court. The Board of Directors shall designate an agent upon whom service of process may be made in any State, Territory, or jurisdiction in which any insured bank is located."

Sec. 206. Nothing contained in this title shall be construed to repeal, modify, or affect the provisions of section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829).

Sec. 207. Section 30 of the Banking Act of 1933 (12 U.S.C. 77) is hereby repealed.

Passed the Senate August 22, 1966.

Attest:

EMERY L. FRAZIER, *Secretary*.

[S. 3695, 89th Cong., 2d sess.]

AN ACT To amend the Small Business Investment Act of 1958, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Small Business Investment Act Amendments of 1966".

Sec. 2. Section 201 of the Small Business Investment Act of 1958 is amended to read as follows:

"ESTABLISHMENT OF SMALL BUSINESS INVESTMENT DIVISION

"Sec. 201. There is hereby established in the Small Business Administration a division to be known as the Small Business Investment Division. The Division shall be headed by an Associate Administrator who shall be appointed by the Administrator, and shall receive compensation at the rate provided by law for other associate administrators of the Small Business Administration."

Sec. 3. Section 308 of the Small Business Investment Act of 1958 is amended—

- (1) by striking out the last two sentences of subsection (c); and
- (2) by inserting after subsection (e) the following new subsections:

"(f) In the performance of, and with respect to the functions, powers, and duties vested by this Act, the Administrator and the Administration shall (in addition to any authority otherwise vested by this Act) have the functions, powers, and duties set forth in the Small Business Act, and the provisions of sections 13 and 16 of that Act, insofar as applicable, are extended to the functions of the Administrator and the Administration under this Act.

"(g) The Administration shall include in its annual report, made pursuant to section 10(a) of the Small Business Act, a full and detailed account of its operations under this Act. Such report shall set forth the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year, together with an estimate of the total losses which the Government can reasonably expect to incur as a result of such operations during the then current fiscal year."

SEC. 4. (a) Section 309 of the Small Business Investment Act of 1958 is amended by striking out the section heading and inserting in lieu thereof the following:

"REVOCATION AND SUSPENSION OF LICENSES; CEASE AND DESIST ORDERS".

(b) Section 309(a) of such Act is amended—

(1) by inserting "revoked or" before "suspended";

(2) by striking out in paragraph (1) "Administration, for the purpose of obtaining the license" and inserting in lieu thereof "Administration"; and

(3) by striking out in paragraph (2) "for the purpose of obtaining the license,".

(c) Section 309(b) of such Act is amended to read as follows:

"(b) Where a licensee or any other person has not complied with any provision of this Act, or any regulation issued pursuant thereto by the Administration, or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of such Act or regulation, the Administration may order such licensee or other person to cease and desist from such action or failure to act. The Administration may further order such licensee or other person to take such action or to refrain from such action as the Administration deems necessary to insure compliance with the Act and the regulations. The Administration may also suspend the license of a licensee, against whom an order has been issued, until such licensee complies with such order."

(d) Section 309(c) of such Act is amended—

(1) by inserting after "licensee", each place it appears, the following: "or other person"; and

(2) by inserting before "suspending", each place it appears, the following: "revoking or".

(e) Section 309(e) of such Act is amended by inserting after "licensee", the first place it appears, the following: ", or other person against whom an order is issued,".

(f) Section 309(f) of such Act is amended—

(1) by striking out the first sentence and inserting in lieu thereof the following: "If any licensee or other person against which or against whom an order is issued under this section fails to obey the order the Administration may apply to the United States court of appeals, within the circuit where the licensee has its principal place of business, for the enforcement of the order, and shall file a transcript of the record upon which the order complained of was entered."; and

(2) by inserting "or other person" before the period at the end of the second sentence.

SEC. 5. Section 310 of the Small Business Investment Act of 1958 is amended—

(1) by striking out the section heading and inserting in lieu thereof "EXAMINATIONS AND INVESTIGATIONS"; and

(2) by inserting "(a)" after "Sec. 310.", and by adding at the end thereof a new subsection as follows:

"(b) Each small business investment company shall be subject to examinations made by direction of the Administration by examiners selected or approved by the Administration, and the cost of such examinations, including the compensation of the examiners, may in the discretion of the Administration be assessed against the company examined and when so assessed shall be paid by such company. Every such company shall make such reports to the Administration at such times and in such form as the Administration may require; except that the Administration is authorized to exempt from making such reports any such company which is registered under the Investment Company Act of 1940 to the extent necessary to avoid duplication in reporting requirements."

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SEC. 6. Section 311 of the Small Business Investment Act of 1958 is amended by adding at the end thereof the following new subsection:

"(c) The Administration shall have authority to act as trustee or receiver of the licensee. Upon request by the Administration, the court may appoint the Administration to act in such capacity unless the court deems such appointment inequitable or otherwise inappropriate by reason of the special circumstances involved."

SEC. 7. Title III of the Small Business Investment Act of 1958 is further amended by adding at the end thereof the following new sections:

"REMOVAL OR SUSPENSION OF DIRECTORS AND OFFICERS OF LICENSEES

"SEC. 313. (a) Whenever, in the opinion of the Administration, any director or officer of a licensee has committed any violation of this Act, or any regulation issued thereunder, or of a cease-and-desist order which has become final, or has committed or engaged in any act, omission, or practice which constitutes a breach of his fiduciary duty as such director or officer, and the Administration determines that the licensee has suffered or will probably suffer substantial financial loss or other damage or that the interests of the Administration could be seriously prejudiced by reason of such violation or practice or breach of fiduciary duty, and that such violation or practice or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, the Administration may serve upon such director or officer a written notice of its intention to remove him from office.

"(b) In respect to any director or officer referred to in subsection (a), the Administration may, if it deems it necessary for the protection of the licensee or the interests of the Administration, by written notice to such effect served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. Such suspension and/or prohibition shall become effective upon service of such notice and, unless stayed by a court in proceedings authorized by subsection (d), shall remain in effect pending the completion of the administrative proceedings pursuant to the notice served under subsection (a) and until such time as the Administration shall dismiss the charges specified in such notice, or, if an order of removal and/or prohibition is issued against the director or officer, until the effective date of any such order. Copies of any such notice shall also be served upon the interested licensee.

"(c) A notice of intention to remove a director or officer, as provided in subsection (a), shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Administration at the request of (1) such director or officer and for good cause shown, or (2) the Attorney General of the United States. Unless such director or officer shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal. In the event of such consent, or if upon the record made at any such hearing the Administration shall find that any of the grounds specified in such notice has been established, the Administration may issue such orders of removal from office as it deems appropriate. Any such order shall become effective at the expiration of thirty days after service upon such licensee and the director or officer concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order shall remain effective and enforceable except to such extent as it is stayed, modified, terminated, or set aside by action of the Administration or a reviewing court.

"(d) Within ten days after any director or officer has been suspended from office and/or prohibited from participation in the conduct of the affairs of a licensee under subsection (b), such director or officer may apply to the United States district court for the judicial district in which the home office of the licensee is located, or the United States District Court for the District of Columbia, for a stay of such suspension and/or prohibition pending the completion of the administrative proceedings pursuant to the notice served upon such director or officer under subsection (a), and such court shall have jurisdiction to stay such suspension and/or prohibition.

"(e) Whenever any director or officer of a licensee is charged in any information, indictment, or complaint authorized by a United States attorney, with the

commission of or participation in a felony involving dishonesty or breach of trust, the Administration may, by written notice served upon such director or officer, suspend him from office and/or prohibit him from further participation in any manner in the conduct of the affairs of the licensee. A copy of such notice shall also be served upon the licensee. Such suspension and/or prohibition shall remain in effect until such information, indictment, or complaint is finally disposed of or until terminated by the Administration. In the event that a judgment of conviction with respect to such offense is entered against such director or officer, and at such time as such judgment is not subject to further appellate review, the Administration may issue and serve upon such director or officer an order removing him from office. A copy of such order shall be served upon such licensee, whereupon such director or officer shall cease to be a director or officer of such licensee. A finding of not guilty or other disposition of the charge shall not preclude the Administration from thereafter instituting proceedings to suspend or remove such director or officer from office and/or to prohibit him from further participation in licensee affairs, pursuant to subsection (a) or (b).

"(f) (1) Any hearing provided for in this section shall be held in the Federal judicial district or in the territory in which the principal office of the licensee is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of the Administrative Procedure Act. Such hearing shall be private, unless a public hearing is agreed to by the party afforded the hearing and by the Administration. After such hearing, and within ninety days after the Administration has notified the parties that the case has been submitted to it for final decision, the Administration shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Administration may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Administration may modify, terminate, or set aside any such order with permission of the court.

"(2) Any party to such proceeding may obtain a review of any order served pursuant to paragraph (1) of this subsection (other than an order issued with the consent of the director or officer concerned, or an order issued under subsection (e) of this section), by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Administration be modified, terminated, or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Administration, and thereupon the Administration shall file in the court the record in the proceeding, as provided in section 2112 of title 28 of the United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administration. Review of such proceedings shall be had as provided in the Administrative Procedure Act. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28 of the United States Code.

"(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administration.

"UNLAWFUL ACTS AND OMISSIONS BY OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS; BREACH OF FIDUCIARY DUTY

"SEC. 314. (a) Wherever a licensee violates any provision of this Act or regulation issued thereunder by reason of its failure to comply with the terms thereof or by reason of its engaging in any act or practice which constitutes or will constitute a violation thereof, such violation shall be deemed to be also a violation and an unlawful act on the part of any person (including the individual

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officers, directors, or employees or agents of such licensee) who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any acts, practices, or transactions which constitute or will constitute, in whole or in part, such violation.

"(b) It shall be unlawful for any officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of his fiduciary duty as such officer, director, employee, agent, or participant, if, as a result thereof, the licensee has suffered or is in imminent danger of suffering financial loss or other damage.

"(c) Except with the written consent of the Administration, it shall be unlawful (1) for any person hereafter to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if (A) he has been convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or (B) he has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or (2) for any person to continue to serve in any of the above-described capacities, if (i) he is hereafter convicted of a felony, or any other criminal offense involving dishonesty or breach of trust, or (ii) he is hereafter found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

"PENALTIES AND FORFEITURES

"Sec. 315. A licensee which violates any regulation or written directive issued by the Administrator, requiring the filing of any regular or special report pursuant to section 310(b) of this Act, shall forfeit and pay to the United States a civil penalty of not more than \$100 for each and every day of the continuance of the licensee's failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect: *Provided*, That the Administration may by rules and regulations, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing, exempt in whole or in part, any small business investment company from the provisions of this section, upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administration finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administration may for the purposes of this section make any alternative requirements appropriate to the situation. The civil penalties provided for in this section shall accrue to the United States and may be recovered in a civil action brought by the Administration.

"JURISDICTION AND SERVICE OF PROCESS

"Sec. 316. Any suit or action brought under section 308, 309, 311, 313, or 315 by the Administration at law or in equity to enforce any liability or duty created by, or to enjoin any violation of, this Act, or any rule, regulation, or order promulgated thereunder, shall be brought in the district wherein the licensee maintains its principal office, and process in such cases may be served in any district in which the defendant maintains its principal office or transacts business, or wherever the defendant may be found."

Sec. 8. (a) Section 4(b) of the Small Business Act is amended by striking out "three Deputy Administrators" and inserting in lieu thereof "a Deputy Administrator and three Associate Administrators (including the Associate Administrator specified in section 201 of the Small Business Investment Act of 1958)".

(b) Such section is further amended by adding at the end thereof the following: "The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator."

(c) (1) Section 303(d) of the Federal Executive Salary Act of 1964 is amended by adding at the end thereof the following:

"(70) Deputy Administrator of the Small Business Administration."

(2) Section 308(e)(11) of such Act is amended by striking out "Deputy Administrators of the Small Business Administration (4)" and inserting in lieu thereof "Associate Administrators of the Small Business Administration (3)".

Sec. 9. (a) Chapter 17 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 338. Stock of small business investment companies as collateral for loans

"Whoever, being an officer, director, or principal shareholder of any small business investment company which is licensed under the provisions of the Small Business Investment Act of 1958, knowingly offers any shares of stock in such company as security for any loan to purchase an interest in such company, shall be fined not more than \$10,000 or imprisoned not more than one year, or both.

"As used in this section, the term 'principal shareholder' of any small business investment company means a person who directly or indirectly owns, controls, or holds with power to vote, 10 per centum or more of the outstanding voting shares of such company.

"This section shall not be construed to apply to any loan made prior to the effective date of this section, to any such officer, director, or principal shareholder, unless, after the expiration of ninety days after such date, such loan is secured in whole or in part by collateral consisting of shares of stock in such company."

(b) The analysis to chapter 17 of title 18, United States Code, is amended by adding at the end thereof a new item as follows:

"338. Stock of small business investment companies as collateral for loans."

Sec. 10. (a) The table of contents of the Small Business Investment Act of 1958 is amended—

(1) by striking out the items describing the contents of sections 309 and 310 and inserting in lieu thereof the following:

"Sec. 309. Revocation and suspension of licenses; cease and desist orders.

"Sec. 310. Examinations and investigations.";

and

(2) by inserting at the end of that part which describes the contents of title III the following new items:

"Sec. 313. Removal or suspension of directors and officers of licensees.

"Sec. 314. Unlawful acts and omissions by officers, directors, employees, or agents; breach of fiduciary duty.

"Sec. 315. Penalties and forfeitures.

"Sec. 316. Jurisdiction and service of process."

Passed the Senate September 8, 1966.

Attest:

EMERY L. FRAZIER, *Secretary.*

THE UNDER SECRETARY OF THE TREASURY,
Washington, D.C., September 14, 1966.

Hon. WRIGHT PATMAN,
Chairman, Banking and Currency Committee,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your letter of September 14, 1966, in which you request the views of this Department on S. 3158, a bill to strengthen the regulatory and supervisory authority of Federal agencies over insured banks and insured savings and loan associations, and for other purposes.

The President, in his January 1966 Economic Report, stated that appropriate regulations are clearly required to protect the safety of savings of American families and to assure the most efficient and equitable regulation of financial institutions. Among other measures, he recommended congressional action on financial legislation to "arm regulatory agencies with a wider range of effective enforcement remedies." S. 3158 would carry out this recommendation of the President.

The proposed legislation would grant to the Home Loan Bank Board with respect to savings and loan associations, and to the bank supervisory agencies with respect to banks, the power to issue cease-and-desist orders in any case where an institution has violated law or regulation or has engaged in unsafe or unsound practices. It would also provide authority for the removal, after a

hearing, of those directors or officers of institutions who have committed violations of law or regulation, or engaged in unsafe or unsound practices, or breached their fiduciary duty, causing substantial probable loss or damage to the institution, or serious prejudice to the interests of depositors or shareholders, where such violation or practice or breach of duty is one involving personal dishonesty on the part of such director or officer. If the gravity of the charges warranted it, such directors or officers could be suspended pending the hearing.

The proposed legislation is simply designed to fill a gap in the procedures that are now available to protect the savings of American families. The vast majority of our banks and savings and loan associations are soundly managed and operated and are in excellent financial condition. We must insure, however, that there is no lack of legislative authority to enable the supervisory agencies to deal promptly and effectively with problem cases when they do arise.

The principal amendment to the administration proposal adopted by the Senate was a limitation of the removal authority to cases involving personal dishonesty. This limitation is acceptable to the administration and we strongly urge prompt enactment of S. 3158 as passed by the Senate.

The Bureau of the Budget advises that there is no objection to the submission of this report and that enactment of S. 3158 would be consistent with the administration's objectives.

Sincerely yours,

JOSEPH W. BARR

FEDERAL HOME LOAN BANK BOARD,
Washington, D.C., September 15, 1966.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
U.S. House of Representatives.

DEAR MR. CHAIRMAN: Reference is made to a request from the staff of your committee for a report on S. 3158, as passed by the Senate on August 22, 1966.

Title I of S. 3158 would amend section 5(d) of the Home Owners' Loan Act of 1933 and section 407 of the National Housing Act. Its purpose is to strengthen and make more immediately effective the supervisory and regulatory authority of, among other agencies, the Federal Home Loan Bank Board over all savings and loan associations under its jurisdiction, in order to provide valuable additional protection to a major sector of our financial system and to millions of our citizens who have entrusted their savings to it.

Similar authority is requested, in title II of the bill, by the Federal banking agencies—the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System—in their respective areas.

S. 3158 as passed by the Senate, although it contains several important modifications of the bill originally transmitted, is acceptable to and fully supported by the Federal Home Loan Bank Board.

Informal advice has been received from the Bureau of the Budget that there is no objection, from the standpoint of the President's program, to the submission of this report.

With kindest regards, I am,

Sincerely,

JOHN E. HORNE

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM,
OFFICE OF THE CHAIRMAN,
Washington, D.C., September 19, 1966.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for a report on S. 3158, as passed by the Senate.

As you know, the Board joined with the Secretary of Treasury, the Chairman of the Federal Deposit Insurance Corporation, and the Chairman of the Federal

Home Loan Bank Board in recommending enactment of S. 3158 as introduced. We now recommend favorable action on the bill as passed by the Senate.

In exercising its supervisory responsibilities with respect to State member banks, the Board has found that for the most part questionable practices are corrected when brought to the attention of the officers or directors of the bank involved. In the exceptional case where corrective action is not obtained in this fashion, the Board has available two basic enforcement procedures, both of which are too severe and too cumbersome for use in any but the most extreme cases. Under section 9 of the Federal Reserve Act, the Board may terminate a State bank's membership in the System, with a resulting loss of its deposit insurance. Under section 30 of the Banking Act of 1933 the Board may remove an officer or director of a member bank for continuing a violation of law or unsafe or unsound practice after having been warned to stop it (where a national bank is involved, the proceeding must be initiated by the Comptroller, but the Board determines whether the individual should be removed).

The provisions of S. 3158 authorizing cease-and-desist orders fill two important needs: the need for an intermediate, less drastic means of enforcement than those now available, and the need for a sanction that can be employed promptly in emergency situations. Although the Board has reservations about the Senate amendment limiting suspension and removal orders to cases involving personal dishonesty—an amendment that may prove unduly restrictive—we believe that the benefits to the public and the banking industry to be derived from the new cease-and-desist procedures outweigh any shortcomings in the suspension and removal procedures.

Accordingly, we recommend prompt and favorable action on the bill.

Sincerely yours,

WM. MC. MARTIN, Jr.

FEDERAL DEPOSIT INSURANCE CORPORATION,
OFFICE OF THE CHAIRMAN,
Washington, D.C., September 15, 1966.

HON. WRIGHT PATMAN,
*Chairman, Committee on Banking and Currency,
House of Representatives,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Corporation concerning S. 3158, 89th Congress, a bill to strengthen the regulatory and supervisory authority of Federal agencies over insured banks and insured savings and loan associations, and for other purposes, which was passed by the Senate on August 22, 1966.

The purpose of this bill is to give to the Federal supervisory agencies additional statutory authority to enable them to move more quickly and effectively to require adherence to the law and cessation and correction of unsafe or unsound practices by insured banks and savings and loan associations.

The existing remedies have proven inadequate because they are too severe or so time consuming or cumbersome as to permit substantial injury before remedial action can be effected. While it contains numerous other improvements in existing law, the major provisions of the proposed legislation are ones which authorize two new intermediate remedies. The first is the issuance of temporary and permanent cease-and-desist orders directed at violations of law or regulations or unsafe or unsound practices by insured institutions. The second is the suspension and removal of directors and officers for violations of law or regulations, unsafe or unsound practices, or breaches of fiduciary duty, causing substantial financial loss or other damage and involving personal dishonesty.

There are carefully drawn provisions with respect to administrative hearings and judicial review which fully protect the rights of individuals and insured institutions against whom action may be taken by the supervisory agencies. Also, the bill clearly recognizes the responsibility of the State supervisory agencies for action with respect to State-chartered institutions by providing for notice and an opportunity for action by them prior to the institution of proceedings by the Federal agencies.

This legislation would provide the basis for substantial improvement in the supervision of insured banks and savings and loan associations. It is needed

to equip the Federal supervisory agencies better to protect the public and, accordingly, this Corporation recommends its enactment.

The Bureau of the Budget has advised us that there is no objection to the submission of this report and that the enactment of S. 3158 would be in accord with the administration's objectives.

Sincerely yours,

K. A. RANDALL, *Chairman.*

The CHAIRMAN. The most significant provisions in both S. 3158 and S. 3695 are those for cease-and-desist orders and the suspension and removal of officers and directors.

The Federal agencies consider this "must" legislation. And although hearings were held in the Senate, the members of this committee agreed that the sheer significance of these proposals plus the desire of interested parties to testify on certain controversial points, require that we also have public hearings.

So I am happy to welcome this morning Chairman Horne, of the Federal Home Loan Bank Board, who will testify on S. 3158, and Mr. Bernard L. Boutin, Administrator of the Small Business Administration, who will testify on S. 3695.

These are two able and distinguished public officials. Chairman Horne, we will hear from you first.

After we hear from you we will hear from Mr. Boutin and then the committee will interrogate the two of you because these bills have much in common.

You may go ahead, Mr. Horne.

STATEMENT OF HON. JOHN E. HORNE, CHAIRMAN, FEDERAL HOME LOAN BANK BOARD; ACCOMPANIED BY KENNETH SCOTT, GENERAL COUNSEL

Mr. HORNE. Thank you, Mr. Chairman and other members of the committee. It is a privilege to appear before you today to testify on behalf of the Federal Home Loan Bank Board, on the pending bill S. 3158, title I of which would amend section 5(d) of the Home Owners' Loan Act of 1933 and section 407 of the National Housing Act. Its purpose is to strengthen and make more immediately effective the supervisory and regulatory authority of, among other agencies, the Federal Home Loan Bank Board, over all savings and loan associations under its jurisdiction, in order to provide valuable additional protection to a major sector of our financial system and to millions of our citizens who have entrusted their savings in it.

Similar authority is requested, in title II of the bill, by the Federal banking agencies—the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System—in their respective areas.

The CHAIRMAN. Off the record.

(Discussion off the record.)

Mr. HORNE. Let me emphasize, No. 1, that this industry during recent years has grown tremendously. At the end of World War II, and these are approximate figures, the total assets of this industry were about \$8 billion.

At the present time the assets total about \$130 billion. This growth, brought about, of course, by the great influx of savings and the use

of these savings flows for a rapidly expanding housing market, brought some people into the industry that have not always behaved appropriately, and has created problems within the industry that make it necessary, in our opinion, for our legislation now to be modernized in order to give us 20th-century supervisory authority to go along with this 20th-century industry, a very important financial entity insofar as our total economy is concerned.

There are many changes other than those I briefly related that make it necessary, in our opinion, for us to have the kind of intermediate authority which I am suggesting in legislation.

Now we are not asking the Congress for additional final authority. We have enough final authority. We are asking for intermediate authority with the hope that we would have less need to resort to the use of our final authority.

Under existing legislation, in the case of the federally chartered associations, we only can start down a long road toward a corrective order or move in to take over the association itself.

So far as State-chartered associations are concerned, our only enforcement authority is to terminate the insurance. In either case, so far as the Federals are concerned, if we move in and take them over or in the case of State-chartered associations if we cancel insurance, we have, for all practical purposes, put the association out of business.

This is a pretty drastic course to follow and we follow it with reluctance and we follow it only after persuasion and such authority as we presently possess will not do the job.

On many such occasions we believe that if we had had intermediate authority, the kind of authority that we are requesting under this legislation, we could have accomplished several desirable goals. We could even have prevented some associations from reaching the terrible plight in which they are now situated.

We could have prevented some associations from having to be closed during very recent years.

And we could have effectively, much more effectively than is presently the case, emphasized preventive supervision. We could get to associations in which obvious mistakes are being made, which we constantly now call to the attention of the board of directors or management, which we have no authority to correct except by persuasion—and sometimes persuasion simply does not work.

We could get to these situations a great deal earlier and, I keep stressing, avoid having to use the final authority which is in existing law. Very briefly, we would do this in two ways. First, we would have the authority under this legislation to issue cease-and-desist orders.

The authority to issue cease-and-desist orders is very carefully hedged, insofar as court protection is concerned. I would like to emphasize at this point that we have tried to make sure that everyone has appropriate and full protection, so far as the hearing is concerned under administrative procedures and so far as being able to go to court for review is concerned.

We anticipate and believe that the authority to issue cease-and-desist orders would take care of most of these problems.

The other authority which we are requesting, and this is limited much more than the authority to use cease and desist, as you gentle-

men will appreciate, involves the suspension and removal of management or directors.

This has been narrowed down considerably in the present bill. Some would say it has been narrowed down too much. But under certain conditions, pertaining almost entirely to personal dishonesty, we would have authority under this proposed legislation to suspend or to remove officers or directors.

The exercise of such authority would go through the full administrative procedure, with hearing examiners, and would still be subject to review in court.

In order to be able to act more quickly in situations where it is obvious that we should, we also ask for temporary cease-and-desist authority and for suspension authority so far as the directors or the management are concerned.

In each of these cases, however, the defendant still would have the right to go to court within a 10-day period. If the court issues a stay, then our temporary cease-and-desist order or our suspension would not be effective.

I want to emphasize that we are asking for suspension and temporary cease-and-desist authority because there are times when it is absolutely urgent that we be able to take limited action quickly rather than having to wait for a full administrative hearing or court action.

I also want to emphasize that in either of these two temporary actions, the defendant can still go to court and if the court agrees with him, the court can stay our hands.

We would not want, Mr. Chairman, as some have recommended, to have the very fact that someone goes to court automatically stop everything. This is where we are caught so much now, in one of our procedures for Federal associations, what we call section 5(d)(1). It has been so difficult to use that we have only employed it in about three cases.

Now, Mr. Chairman, I am not giving some of the figures that I gave on the Senate side as to what our situation is, the numbers of cases and things of this sort.

The CHAIRMAN. We have access to that information, Mr. Horne.

Mr. HORNE. I want to suggest even there, Mr. Chairman, in fairness to this committee and in fairness to the Board and its staff, we did not give the Senate all the details that bear on this. So, if this committee would want later on to have an executive session and get facts and figures as to why we are asking for this legislation, I should be very glad to comply with that request.

I want to say, sir, if I may, that during the 3 years I have been on the Board some of the most frustrating experiences I have had is seeing something happen that I know should not happen, something that I know is impairing the image of this industry as a whole, something that I know is not in the public interest, and yet not be able to do anything about it under existing authority.

I might point out, sir, that two other members of this Board who have served in very recent years and who testified before the Senate Banking and Currency Committee gave similar expressions as to a feeling of frustration and unhappiness that they could not take the corrective action that should be taken.

One other point I would like to emphasize is that what we are talking about is only 2 to 3 percent of this industry. I would not want to leave the impression that everybody in this industry by any means is acting improperly or that they don't react favorably to what the Board suggests under existing examination procedures.

What we are talking about is a small handful compared to the whole, but it is this small handful that has done this industry harm already, that has done the public interest harm already, and this kind of situation is what we want to prevent under this legislation now before you, sir.

(The complete statement of Mr. Horne follows:)

STATEMENT OF JOHN E. HORNE, CHAIRMAN, FEDERAL HOME LOAN BANK BOARD

It is a privilege to appear before you today to testify, on behalf of the Federal Home Loan Bank Board, on the pending bill S. 3158, title I of which would amend section 5(d) of the Home Owners' Loan Act of 1933 and section 407 of the National Housing Act. Its purpose is to strengthen and make more immediately effective the supervisory and regulatory authority of, among other agencies, the Federal Home Loan Bank Board over all savings and loan associations under its jurisdiction, in order to provide valuable additional protection to a major sector of our financial system and to millions of our citizens who have entrusted their savings to it.

Similar authority is requested, in title II of the bill, by the Federal banking agencies—the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System—in their respective areas. As this indicates, each of these supervisory agencies has encountered some common problems and come to have some common concerns. My testimony will be limited to our experience and problems with supervision of the savings and loan industry and the provisions of existing savings and loan law. The representatives of the Federal banking agencies will be glad, if desired, to speak to their side of this legislation and the reasons their experience has convinced them it is needed.

H.R. 14159 represents the form in which this legislation was transmitted to Congress on March 20, 1966, by the Secretary of the Treasury, the Chairman of the Board of Governors, the Chairman of the Federal Deposit Insurance Corporation, and myself. Hearings were held on the Senate bill, S. 3158, beginning on April 4, 1966, and ending May 19. S. 3158 was reported by the Senate Banking and Currency Committee on August 18, 1966, with a number of amendments, and passed by the Senate by voice vote on August 22, 1966. It received the support of both the American Bankers Association and the U.S. Savings and Loan League.

S. 3158 as passed by the Senate, although it contains several important modifications of the bill originally transmitted, is in the view of the administration an effective and valuable piece of legislation and is acceptable to and fully supported by the Federal Home Loan Bank Board. My references in this testimony will be to the provisions contained in the bill passed by the Senate, rather than to the initial bill.

For some of the reasons why, so far as the Bank Board is concerned, we participated in the transmission of this proposed legislation and urged its early approval by the Congress, we can begin by looking at recent financial history. There has been a marked, indeed spectacular, shift in the position of the savings and loan business in this country. In 1934, when the Federal Savings and Loan Insurance Corporation was created by Congress, the savings and loan business possessed \$6.4 billion in total assets. In the 11-year period to the end of 1945, the savings and loan industry showed a net gain of quite modest proportions, reaching the level of \$8.7 billion in total assets. In the postwar period, however, the savings and loan industry entered upon an almost fantastic 18-year spurt in both size and earnings, fueled by prosperity and the prolonged boom in residential construction. At the end of 1963 the industry had attained \$108 billion in assets, for a growth rate since 1945 that amounted to doubling about every 5 years.

As the spectacular record of these years became widely appreciated, it drew into the savings and loan business in some instances the kind of operators who were in eager pursuit of quick, short-run profits. However, beginning in the latter part of 1963 housing construction, and with it the savings and loan industry as its major source of financing, entered a period of slack and of relative decline as the pent-up demand of earlier years had at last become largely satisfied. This mild decline in the housing cycle subjected savings and loan institutions to tests of a sort which they had for a long time not experienced. Overly optimistic estimates of sales or values were no longer being redeemed in a year or two by the pressures of growing demand and increasing levels of real estate prices.

The records and reports of the Federal Savings and Loan Insurance Corporation bear public witness to the consequences of these conditions. From January 1963 through July 7 of this year, 30 insured institutions with assets aggregating approximately \$975 million have been forced to merge for supervisory reasons or to go into some form of voluntary liquidation. In nine of these cases, and in two additional cases in which assets were purchased to prevent a default, the Insurance Corporation acquired assets totaling in excess of \$150 million, with respect to which it is estimated losses will exceed \$41 million. Under agreements in another two of these cases, the Corporation is liable for losses as actually sustained, up to a maximum amount of about \$17 million. In another one of the above cases, the Corporation made a \$48 million loan to prevent a default in the institution.

In addition to the foregoing, last year the Insurance Corporation also paid some \$83 million of insured savings accounts in an institution in which a receiver was appointed for the purpose of liquidation, and it is estimated that the Corporation's loss in this case alone will be in excess of \$19 million. And in the brief period since the first of July of this year, we have begun the process of paying an estimated \$34 million of insured savings accounts in two more institutions for whose liquidation a receiver was appointed, and entered into an agreement to absorb losses up to a maximum of \$3 million in a third institution. Over the last 3½ years, therefore, the Corporation has incurred liabilities or estimated losses aggregating at least \$80 million from problem cases.

Although these figures are quite large enough to be a source of concern, they are not so large as to strain the resources of the Insurance Corporation to meet them and to protect the public. We would indeed be derelict if we waited until we were anywhere near such a point before coming to the Congress and acquainting it with the causes of our concern. To complete our presentation to you as we see it, however, we must do more than review the history of the last few years. We should also look ahead, to the extent that we can, based upon our current knowledge of the state of the industry as reflected in examination reports.

I will not take your time today to repeat some of the figures on problem institutions that I reviewed in my Senate testimony, except to note that the picture is not any better than when I testified in April. Indeed, the major new development since then is adverse—the sharply rising cost to associations of money, whether directly in the rate paid on savings or indirectly in the yield on Federal Home Loan Bank obligations and the concomitant cost of bank system advances to members. The speed with which associations' money costs have risen is not matched by their rate of increase in portfolio yield, since home mortgages are a relatively long-term investment. The predictable consequence, in the months ahead, is going to be a sharp squeeze on both liquidity and earnings, to which some will be tempted to respond with practices that are in the long run unsound and unsustainable and injurious to their net worth.

The situation is one which gives me genuine concern, a concern which I am aware many of the members of this committee share. If the committee entertains any serious doubt as to the extent of the need for more effective and workable supervisory authority I would be glad to testify further on this point in executive session. Perhaps it is enough for the moment to assure you that we have had good reason to take a hard look at the techniques and effectiveness of supervision, and to consider how they might be improved.

That leads me into some comments on the present legal structure within which supervision must operate and to an analysis of its shortcomings. To keep these matters within their proper perspective, I should note that supervision of financial institutions is predominantly a process of evaluation of examination reports and of discussion and persuasion. When the examiners find a situation or prac-

tices that our experience over many years and with many institutions leads us to believe are unsound, the problem is brought to the attention of the institution's officers and directors for consideration, explanation, and correction. Supervision works, in actual operation, mostly through discussions and letters and conferences—and in the overwhelming majority of instances nothing more is needed. To a large degree, after all, supervision and management have a shared interest in obtaining sound, efficient, and prudent operation.

But, to be sure, this is not always so. In any large number of persons or institutions, there will be some who are foolish or inept or recalcitrant or even criminal. In such cases, when its powers of persuasion are exhausted or ineffectual, supervision must look to its authority and remedies under the law.

Here I should note, as the members of this committee are aware, that the Federal Home Loan Bank Board has in practice derived its supervisory authority from two different sources. The Board is responsible by law for the chartering and regulation of Federal savings and loan associations, and derives its supervisory authority over them from section 5(d) of the Home Owners' Loan Act. As the operating head of the Federal Savings and Loan Insurance Corporation, the Board is also responsible for safeguarding the interests of the Corporation against undue risk of loss arising from improper practices in the operation of insured institutions, both State and federally chartered. The Board's enforcement authority for insured institutions derives from section 407 of the National Housing Act. It is these two sections that I shall examine more closely.

Section 5(d) contains two procedures whereby the Board can attempt to achieve compliance with the law or regulations or sound practices by a Federal association. In effect, they often give the Board a choice between futility and seizure. Let me explain that conclusion a bit further.

Under the section 5(d) (1) procedure, if there is a violation of law or regulation the Board is required to give the association a written notice of the facts involved and a 30-day period to make correction. After this 30-day period, if the Board determines to proceed further or finds there has not been a correction (if indeed the situation is of a kind where correction is possible), then there is a second notice followed by an administrative hearing. However, within that 30-day period the association is afforded the right to go directly into a U.S. district court, in which case the entire controversy is thereafter in the hands of the judiciary.

That would put the supervisory responsibility in the hands of district court judges throughout the country, whether they are familiar with the functioning of financial institutions or not, rather than in the hands of the agency that has overseen the sound operation of thousands of savings and loan institutions for over three decades. But even that fragmentation of responsibility for the system among men unfamiliar with its nature is not the most serious shortcoming of this procedure. As any litigant with the desire and resources well knows, the safeguards of the judicial process can be used to delay the final result for periods of many years. In one such case that was commenced in January 1962, some 3 years were spent in motions and extended pretrial discovery procedures.

Thus section 5(d) (1) may lend itself to leisurely determination of controversies that are in no way pressing, but I believe it is fairly obvious that the section is ill suited to securing prompt correction of irregular practices or unsafe operations.

Section 5(d) (2) goes to the opposite pole and provides the Board with a procedure to appoint a conservator or a receiver, or in an emergency a supervisory representative in charge, to take custody of an association and operate it. Furthermore, the grounds for invoking this procedure are broad: they include any violation of law or regulation and unsafe or unsound operation, as well as insolvency or the concealment of the institution's books or affairs. The problem here is not that the Board cannot take action that is both prompt and effective; seizure of an association certainly meets both of those standards. The difficulty is rather that the ultimate nature of the remedy has made it inappropriate, in the view of the Board, to use it readily or prematurely.

To summarize, then, if persuasion and discussion do not correct the problem, in the case of a Federal association the Board must make a choice between letting the matter ride, commencing a slow determination of whether the association is in violation, or moving to take complete control of the institution.

In our view, it is obvious indeed that some effective intermediate remedies are needed to fill what is at present a very wide gap in our legal structure.

Turning to the situation of insured State-chartered institutions, which is really the core of our difficulties, section 407 of the National Housing Act provides a procedure for termination of insurance of accounts. Termination of insurance is the only enforcement power the Insurance Corporation possesses over State institutions. And here the dilemma confronting the Board is particularly acute. Termination of insurance is a drastic remedy, for it is most likely to destroy all public confidence in the institution and lead to its demise.

At the same time, as a means of protecting the Insurance Corporation, it is a remedy of dubious value if it actually has to be used. The progress of a termination proceeding through notice, 120-day correction period, hearing, recommended decision, and decision by the Board consumes many months, and it may be further prolonged through court appeals. In its entirety the process can consume years. And if, at the end of the line, a termination order finally becomes effective, then the Insurance Corporation remains liable on existing accounts for 2 more years, no matter what happens to the association or how badly its affairs are further mangled.

I hope I have succeeded in indicating why we have found that we need ways to correct practices or to resolve controversies without waiting so long or having so much at stake. If the savings and loan industry and the Insurance Corporation are to be periodically subjected to elements of stress such as we are now experiencing, we believe it essential that we be provided with the appropriate statutory power to undertake preventive supervision. We believe that our legal remedies should be designed with more of an eye to preventing or lessening losses, rather than being confined to the grim chore of taking over or canceling the insurance of institutions ruined beyond repair.

The proposed legislation which has been transmitted to you undertakes to supply the financial regulatory agencies with effective intermediate remedies to close the gap I have described. I shall not take time in this statement to recite in detail the grounds and procedures that are spelled out in the bill itself. For an extensive summary, I would refer you to the section-by-section analysis which accompanied the Senate committee report on the bill. Additionally, I shall be glad to have the Board's General Counsel and members of our legal and supervisory offices work with the committee and its staff on any details of the bill to whatever extent you may desire. I shall try here merely to indicate in general terms the nature of the remedies we propose and how we believe they might be employed.

Our underlying premise, to reiterate, is that there is definite need for the provision of new and effective intermediate remedies, more limited in impact and more readily employed. This bill would provide such lesser remedies of two sorts: first, cease-and-desist authority and second, provision for removal or suspension of an officer or director.

The new general-purpose remedy would be the cease-and-desist authority. The ground for a cease-and-desist order would be violation of law or regulation or the commission of unsafe or unsound practices. Following notice and the holding of a full hearing on the record before an independent hearing examiner, an order could be issued by the Board which would become effective after 30 days. If during that 30-day period an association wished to appeal to a court of appeals, it could do so, and obtain judicial review of the Board's action.

The grounds to remove or suspend an officer or director are much more closely hedged, and there can be no doubt that this remedy would be less often employed. Even though there were a violation of law or regulation by the person in question or the commission of unsafe practices, the Board could not commence a removal proceeding unless it also found that the association would incur substantial loss or damage from such violation or practice. The Senate narrowed this remedy even further by restricting it to cases of personal dishonesty, so that incompetence—no matter how gross—could not be dealt with by removal. That is a major substantive limitation upon the effectiveness of this portion of the bill.

In other words, only where the officer or director may inflict substantial financial injury on the institution as a result of misconduct amounting to personal dishonesty would this remedy be available to the Board. Since what we are primarily seeking here is some answer to the devastation that can be visited upon an institution by a faithless manager, we view the Senate amendment of this section as reasonably acceptable in the context of a generally effective bill and

are not requesting restoration of the original broader provision. For the same reason, we also provide for suspension of an officer or director who is indicted for commission of a felony involving dishonesty or breach of trust, and for his removal if convicted. And there is another provision to try to catch up with the kind of person who operates behind the scenes and moves on from one institution to the next.

We have seen such situations as these in recent years, and we feel an obligation to do whatever we can to prevent such occurrences in the future. I know that statistics sometimes lack life, so let me describe one of these cases to you in a little detail.

In 1961 the Beverly Savings & Loan Association in Chicago, Ill., converted from mutual to capital stock, the majority of which was issued to and controlled by the association's chairman of the board. The association undertook a program of rapid increase of savings capital, accomplished through the use of money brokers to an extent that violated the regulations of the Insurance Corporation. The association's savings accounts increased from \$2.2 million at the beginning of 1961 to \$10 million at the end of the year and \$27 million a year later, for a growth of over 1,200 percent in the 2-year period. These funds were invested mostly in high interest rate, high fee loans, often in complex transactions where the records were inadequate to reveal the full facts and portions of the transaction were hidden in outside escrows or by other devices.

In addition, association officials began making substantial and excessive loans that redounded to their own benefit, in one instance by the device of making loans totaling more than \$1 million to the manager of another savings and loan association who returned the favor. The chairman of the board constructed an office building, part of which he rented to the association under a 20-year lease at an extravagant rent. To help build the building, he took \$1.1 million of association funds under the guise of leasehold improvements, which he had, therefore, no obligation to repay; he also decided it would be nice to have 4 years' rent in advance, and helped himself to another half million dollars for that.

These transactions were revealed by an examination in early 1963, and the Bank Board issued a 120-day letter to commence a termination-of-insurance proceeding on July 19, 1963, which was all that it had the authority to do. On October 1, 1963, after the association was unable to pay its regular savings dividend, the State supervisor took custody, and the association was placed in voluntary liquidation. The board chairman was indicted in a U.S. district court on four counts of willful misapplication and fraudulent disbursement of funds, and subsequently found guilty on all counts. On appeal, the indictment was ruled improperly drawn and the counts improperly joined, so the case was sent back for a new trial. Meanwhile, however, the Insurance Corporation had had to expend over \$32 million in connection with the voluntary liquidation of Beverly, \$8.4 million of which is now estimated will never be recovered. The provisions of this bill could help in many ways in a case of this sort—and it is by no means unique.

This case history may help make clear an important point—the cease-and-desist proceeding and the suspension-removal proceeding are not alternative ways of handling the same sort of problem, but are designed for quite different kinds of situations. When we learn of transactions showing that the person or group in control of an institution is lacking in the fundamental integrity demanded by a position of public trust and responsibility for millions of dollars of other peoples' savings, that person should be removed from office. It is both inappropriate and ineffectual to chase after him with cease-and-desist orders, telling him to stop robbing the association by one device but leaving him free to think up other maneuvers, as in the *Beverly* case, and use them for a while.

On the other hand, if the question involves not management's honesty but its judgment or interpretation, a cease-and-desist proceeding against the institution is a proper and suitable way to resolve the controversy.

The point I want to stress is that these two remedies do not really cover the same ground. They are addressed to different situations and one is not likely to be a very effective substitute for the other. There can be no doubt that cease and desist would be more generally useful and more commonly employed, but without removal powers we would be unable to deal effectively with persons who are few in number, fortunately, but can do millions of dollars of damage.

Over the last 3 years, in the insurance cases I mentioned at the beginning of this statement, 17 other persons have been so far indicted for willful misapplication of funds of problem institutions. Twelve of the seventeen have been convicted, four have pleaded guilty, and one has been acquitted. The estimated

cost to the Insurance Corporation for the institutions with which those persons were connected is \$23 million. Additional cases have been referred to the Department of Justice and are still in the process of investigation.

As will be clear from consideration of the text of the bill, these new and lesser remedies of cease and desist or removal can be issued only on the basis of a full hearing, conducted under the Administrative Procedure Act by an independent hearing officer. Likewise, any such order is subject to judicial review in the appropriate court of appeals. This procedure is fair, and fully embodies the safeguard of judicial review against any fear of arbitrary or unreasonable administrative action.

At the same time, it must be evident that such procedure and review can be time consuming, and that this poses dangers not to be taken lightly in the supervision of institutions and persons entrusted with the savings of more than 39 million account holders throughout the country. Therefore, to make sure that these new remedies are effective as well as intermediate, provision is made for the issuance when needed of a temporary cease-and-desist order or a suspension order, during the pendency of the administrative hearing. These provisions are absolutely vital, for they permit prompt action when the situation brooks no delay. The bill confines such immediately effective orders to situations where the violation or practice threatens substantial financial damage to the association. As noted, such orders are limited in duration to the period of the administrative hearing and proceedings, but even so, provision is made that such temporary orders can be modified or set aside upon application to the district courts.

We have been conscious throughout this bill of the need to consider, and balance, both the essentiality in the public interest of prompt and effective action when warranted and the traditional respect of our legal system for protection of individual interests by provision of opportunity for hearing and judicial review. As a matter of fact, there can be no doubt that the approach of this bill markedly increases the role of judicial review in the process of supervision of financial institutions. At the same time, the Board believes it essential for the supervisory agency that examines and is familiar with the developments in a financial institution to be able to judge when action is necessary and what action is appropriate, and to act promptly if the matter is urgent. Money is the stock in trade of a financial institution, and no business has a kind of merchandise more susceptible to rapid dissipation.

We have also been conscious, in drafting this bill, that under our dual system the primary responsibility for supervision of State-chartered financial institutions lies on the State authorities. We have no quarrel with that concept, and would expect in the future as in the past to work in close consultation with State supervisory agencies and to rely on them fully when they are able and willing to undertake effective action. At the same time, our experience—which I would be quite willing to provide the committee in specific terms if desired—has made evident the need at times for a second line of defense, in the hands of the Federal insuring agency. Our objective is quite simply an effective backup capacity when needed, and hence we do not object to the amendments adopted by the Senate to assure State authorities of notice and opportunity for action or objection on their part before we commence a proceeding involving an insured State institution.

This bill contains some lesser provisions which we hope will also be useful. For example, there is a provision for notification of change in control of an insured institution that is along the lines of Public Law 88-593, enacted in the last Congress to cover banks insured by the Federal Deposit Insurance Corporation. Another most helpful provision would afford the Board's examiners sufficient authority for more effective performance of their vital functions.

In conclusion, let me emphasize that the adequacy of supervision over the savings and loan industry has become a matter of no small consequence to the economy of our country and the protection of the public. As of June 30, 1966, there were 4,514 insured institutions with assets of more than \$127 billion and savings accounts of about \$108 billion. Last year the savings and loan industry made over \$23 billion in new mortgage loans and accounted for about 43 percent of the financing of 1- to 4-family homes. As it has watched developments over the last few years, the Board has become convinced of the need to take, and to enforce if necessary, earlier action to prevent dubious practices and individuals from doing millions upon millions of dollars of damage in a few short years or even months, possibly mounting to dimensions that could bring an entire system into needless question.

Our present statutory tools are principally those of last resort—the takeover of a Federal association under section 5(d) or the termination of insurance of a State association under section 407. The Federal banking agencies find themselves in a similar position. What we are seeking is the possibility of acting effectively but in more limited ways—ways that may prevent deterioration of a precarious situation or forestall greater ultimate loss.

Our present tools are blunt and massive and not well designed for use in a campaign of preventive supervision. Should we continue to have no alternative, I suppose we should have to consider using custody or termination proceedings in a freer way and at earlier stages than we have so far believed appropriate. This bill would provide alternatives which are both appropriate and timely, and I speak the unanimous conviction of the members of the Federal Home Loan Bank Board in urging its enactment. It reflects serious study and consideration based on the Board's actual experiences, over a long period of time, in dealing with supervisory problems and endeavoring to safeguard the interests of the public, the savings and loan business, and the Insurance Corporation.

I have come here today to lay before this committee the problem as we see it and the answers that we believe this bill would afford, much as I did in my earlier testimony before the Senate. I hope this measure will receive your prompt and favorable consideration.

The CHAIRMAN. Now if you and your two most important staff people with you will move over and let Mr. Boutin and his two most important people with him come to the same table we will hear them and then we will interrogate each one of you, please.

Mr. HORNE. Thank you very much, Mr. Chairman.

The CHAIRMAN. Mr. Boutin, we are glad to have you, sir. You are the Administrator of the Small Business Administration. If it is satisfactory to you, you may summarize your testimony and then we will interrogate each one of you.

STATEMENT OF HON. BERNARD L. BOUTIN, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION

Mr. BOUTIN. Thank you very much, Mr. Chairman. I am glad to be here before this committee this morning to speak in regard to H.R. 16934 and Senate bill 3695. I would like to say, Mr. Chairman and members of the committee, that while H.R. 16934 which was introduced by the chairman at our request is the bill we would have liked to have seen passed, we understand because of the urgency and the controversial nature of some of the sections in the House bill, as introduced, we probably would not be able to get legislation this session.

So we are recommending, Mr. Chairman, that Senate bill 3695, as approved by the Senate Banking and Currency Committee, and approved by the Senate, be substituted for H.R. 16934.

I will summarize the basic points quickly, with my statement being introduced for the record.

The CHAIRMAN. Your entire statement will appear at this point in the record at the beginning of your testimony, Mr. Boutin.

(The statement of Mr. Boutin follows:)

STATEMENT OF BERNARD L. BOUTIN, ADMINISTRATOR, SMALL BUSINESS ADMINISTRATION

Mr. Chairman, I appreciate the opportunity to appear before you today to discuss S. 3695, a bill which would improve the organization of the Small Business Administration and strengthen the regulatory powers of the agency over the small business investment company program established by the Small Business Investment Act of 1958.

The SBIC program is an imaginative approach to solving the long-term credit and equity financing problems encountered by many small firms. It combines Government funds with the talent and capital of private investors. I believe this is a creative partnership and should be both preserved and strengthened.

Nevertheless the industry has, as you know, encountered problems. Not the least of these problems are those which arise from violations of the act and our regulations by some small business investment companies. We are not taking vigorous action against violations to the limits of our existing authority. However, experience has demonstrated that additional statutory authority is necessary to enable us to proceed effectively in our enforcement operations. Accordingly, SBA requested introduction of this legislation, which is a companion bill to H.R. 16934, introduced by the chairman. Since Senate action has already been taken on S. 3695, I will discuss that legislation as it has been amended.

S. 3695, as passed by the Senate, is a minimum package which would provide SBA with tools needed for tighter enforcement. The measure has been stripped of some features which were proposed by us and were in the bill as introduced. (These are indicated in the attachment to my statement, which summarizes the changes effected in the bill since its introduction.) Nevertheless, in its present form it contains many useful provisions and, in the interest of obtaining legislation this year, I urge its enactment. If any further authority is found necessary, we will request it from the next Congress.

I would like to review briefly with the committee the key features of S. 3695, as passed by the Senate.

ORGANIZATIONAL CHANGES IN SBA

Section 2 of the bill amends title II of the Small Business Investment Act of 1958, which I will refer to hereafter in this statement as the act.

Title II now specifies that there shall be in the Small Business Administration an Investment Division (ID) which shall be headed by a Deputy Administrator. In substance, title II also provides that the powers conferred upon the Administration under the act are to be exercised by the Administration through the Investment Division and that the powers conferred upon the Administrator thereunder are to be exercised by him through the Deputy Administrator in charge of that Division.

Title II could be, and perhaps has been construed, as meaning that all actions by the Administrator pursuant to the act must, without exception, be taken by him through the Deputy Administrator for ID. Such an interpretation, of course, would be entirely inconsistent with the Administrator's responsibilities under the act. Therefore, and in order to clarify that ID is to be the normal instrumentality for administering the small business investment program, but that other resources of SBA may be also utilized, the bill deletes the language pertaining to administration of the program through ID and the Deputy Administrator for ID. This change will insure that the SBIC program will have available to it all of the services and benefits of a diversified agency with wide experience in conducting financial and management assistance programs.

A related organization change, contemplated by section 8 of the bill, revises the title of the present Deputy Administrators to that of Associate Administrators. At the same time it authorizes the appointment of a single Deputy Administrator to assist the Administrator. This new deputy will be empowered to function as Acting Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

At the present time SBA is one of the few agencies of the Government which lacks specific authorization for such an acting head. This should be remedied.

It is important to note that the salaries and status of the present Deputy Administrators (the new Associate Administrators) are not affected by the proposed change. The bill also contains an amendment to the Federal Executive Salary Act providing that the position of Deputy Administrator would be established at level IV of the pay scale and the Associate Administrators (the present Deputy Administrators) would remain at level V.

AUTHORITY OF SBA TO ACT AS RECEIVER

Section 6 of the bill would authorize SBA to act as trustee or receiver of an SBIC, with also appointed by a court. This proposal is in the nature of a clarification amendment. We believe that the authority already exists. In at least one case, it has been exercised.

Experience has demonstrated the difficulty of obtaining a qualified person to act as trustee or receiver of an SBIC, especially where insufficient assets are available. In many cases the search for such a person has led to delays during which the position of the company has deteriorated. In other cases unqualified appointees, finding themselves unable to handle the affairs of the company, have asked the court to be relieved.

In large part this situation is due to the fact that SBIC's are a relatively new type of financial institution whose nature and characteristics are not commonly known, even among people otherwise versed in the fields of banking and investment. Similarly, the applicable laws and regulations are not widely known and understood.

On the other hand SBA has at its disposal personnel who are familiar with the industry and who, in most cases, are familiar also with the background of the particular SBIC involved—its problems and the causes thereof, the nature of its investments, its financial status, etc. Such knowledge, which cannot readily be transmitted to a person new to the situation, may thus be promptly brought into play by the appointment of SBA as trustee or receiver.

In every instance, it should be noted, the question whether SBA is to be appointed as trustee or receiver rests entirely with the court. Such an appointment would never be made where it would be to the disadvantage of creditors of the SBIC other than SBA. The agency would serve usually only where it is the principal creditor or, as is often the case, the sole creditor.

It also should be noted that the bill, as passed by the Senate, contains a provision that SBA shall include in its annual report to Congress and the President the amount of losses sustained by SBA in the preceding fiscal year due to loans to SBIC's, and an estimate of probable future losses of this type during the current fiscal year.

ADMINISTRATIVE REVOCATION OF SBIC LICENSES

Section 4 of the bill would authorize SBA to revoke by administrative action the licenses of SBIC's guilty of violation so serious as to call for their removal from the program. The only presently existing means of obtaining this result is through court action, pursuant to section 308(d) of the act, entailing the delays which usually accompany such litigation.

Specifically, such administrative revocation would be authorized for willful or repeated failure to observe any provision of the act or of any rule or regulation issued thereunder; or for willful or persistent violation of any cease-and-desist order issued by SBA. It would also be authorized for falsehoods or misleading assertions knowingly included in any statement required by SBA.

Under present law the strongest administrative sanction available for such offenses is suspension of the violator's license; and, in the case of falsehoods or misleading assertions, even this remedy can be invoked only where the statement involved was filed for the purpose of obtaining a license.

Suspension is not an adequate administrative tool for dealing with SBIC's, which have demonstrated by the gravity of their offenses, that they are likely beyond redemption. In such cases suspension does not reach the issue, because it contemplates the eventual restoration to the program of parties who likely should not remain in it.

Typically, the more appropriate solution is prompt revocation, prompt expulsion from the program. The bill would provide this solution without depriving such companies of their rights. It should be emphasized that they would enjoy all of the protection afforded by the Administrative Procedure Act, and by judicial review, against arbitrary action.

This administrative authority will be particularly useful as a means of removing from the program inactive SBIC's—the ones which have simply sat on their funds, including those obtained from the Government, and refused to use them for the benefit of small business.

MORE EFFECTIVE ADMINISTRATIVE SANCTIONS

Section 7 of the bill would add a new section 314 to the act which provides that a violation of the act or the regulations by an SBIC is, at the same time, a violation on the part of the officers, directors, or agents of the company who participated in or were otherwise responsible for the company's violation. This

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is a recognition of the fact that a company can act only through its management personnel and that the guilt for the company's violation is basically theirs.

At the present time SBA can proceed administratively to issue a cease-and-desist order only against the SBIC. Such a proceeding, not including as parties the people who actually committed the offense, can hardly produce satisfactory results. Moreover, it is hardly sensible to authorize SBA to investigate individuals as well as SBIC's, pursuant to section 310 of the act, and, at the same time, deny the agency a prompt and effective means of following up on resulting evidence of violations by such individuals. The bill (sec. 4(c)) therefore authorizes cease-and-desist proceedings against individuals who have violated the act or regulations, as well as against the SBIC itself.

These amendments, permitting us to reach beyond the company and deal directly with the offenders themselves, will greatly strengthen our enforcement. We could order them, as individuals, to take such action or refrain from such action as may be necessary to remedy the situation. Since failure to comply would expose them to personal responsibility, such orders will be much more effective than those issued against a company.

In further contrast to existing law, the bill authorizes SBA to prohibit by administrative action violations which, though not yet consummated, are about to be committed. For example, SBA may discover an executory contract made by an SBIC calling for an act which will violate the law or the regulations. The agency should not be compelled to wait until the act occurs. Nor should it be limited to court action, pursuant to section 311 of the act, as a means of preventing such an act.

A related feature contained in a new section 313 of the act is authority for SBA, subject to judicial review, to remove after hearings, and to suspend pending the hearing, directors or officers from office in an SBIC. This authority, however, could only be exercised in cases involving personal dishonesty where there was also a violation of the act, regulations, or of a cease-and-desist order, or a serious breach of fiduciary duty on the part of the officer or director. This provision is patterned closely after similar authority contained in pending legislation strengthening the authority of agencies regulating other financial institutions. Our intent is to take such action only where serious offenses are involved and only where there is no other means of insuring against their repetition.

The removal authority we are requesting is, essentially, a means of saving SBIC's which might otherwise be lost to the program. It will be useful in cases where one or more individuals associated with a company, rather than the company itself, are the root of the trouble.

As a means of minimizing the number of potential troublemakers in the program, the bill also prohibits anyone from hereafter becoming an SBIC official, without the written consent of the Administrator, who has been convicted of a felony or of any crime involving dishonesty or breach of trust or who has had a judgment or court order entered against him in civil proceedings for conduct involving dishonesty or breach of trust. Similarly, a person already serving as an SBIC official will not be permitted to continue if he hereafter commits such an offense.

MORE EFFECTIVE JUDICIAL SANCTIONS

A new feature of the bill as passed by the Senate is its provision in section 9 for criminal penalties against any officer, director, or principal stockholder of an SBIC who knowingly offers any shares of stock in such company as security for any loan to purchase an interest in such SBIC.

The bill would also provide for court proceedings to assess civil penalties against SBIC's which fail to make timely filings of reports required by the regulations or by written directive of the Administrator. This provision is essential to combat delinquent filings. The measure would, subject to appropriate procedural safeguards, authorize a penalty of up to \$100 per day for every day of unjustified delay. Finally, the bill closes a jurisdictional loophole which has sometimes prevented us from taking action in a single court proceeding against both an SBIC and its officials.

CONCLUSION

Mr. Chairman, we believe that this legislation is urgently needed. The SBIC program, once it is operating properly, has enormous potential. The sooner we can make sure that it does operate properly, the sooner this potential will be realized.

I would also like to inform the committee that this legislation has received clearance from the Bureau of the Budget as being consistent with the objectives of the national administration.

COMPARISON BETWEEN S. 3695 AS INTRODUCED, AND AS PASSED BY THE SENATE

DELETIONS

1. Deletion of repeal (sec. 2, at p. 1 of original bill) of statutory specification of Investment Division and ID Deputy in title II of the act. (Effect is to retain statutory specification.)
2. Deletion of section (sec. 310(b)(2), at p. 3 of original bill) authorizing SBA to examine small firms receiving financial assistance from SBIC's, where the Administrator considers such examination necessary or appropriate.
3. Deletion of section (sec. 315, at p. 8 of original bill) providing for personal liability of officers or directors of an SBIC indebted to SBA, for financial damage to SBA caused by their knowing violation of the act or regulations relating to the disbursement of funds or the lending of credit.

ADDITIONS

1. Specification that SBA shall include in its annual report data on its operation under the Small Business Investment Act and on losses sustained, or which it is estimated will be sustained, due to such operations. (Sec. 308(g), at p. 2 of bill as passed by the Senate.)
2. Addition of requirement that any act warranting suspension or removal of an SBIC officer or director from office be one involving personal dishonesty. (Sec. 313(a), at p. 6 of bill as passed by the Senate.)
3. Addition of procedural safeguards to section providing civil penalties for late filing by SBIC's of required reports. (Sec. 315, at p. 14 of bill as passed by the Senate.)
4. Provision that the new Deputy Administrator position shall be at level IV of the Federal Executive Salary Act. (Sec. 8(c)(1), at p. 16 of bill as passed by the Senate.)
5. Addition of section providing criminal penalties for an officer or director of an SBIC who knowingly offers any shares of stock in such company as security for any loan to purchase an interest in such SBIC. (Sec. 338, at p. 16 of bill as passed by the Senate.)

OTHER CHANGES

A number of technical changes were made in the bill. It should be noted that the language on removal or suspension of directors and officers of SBIC's (sec. 309(b), at p. 5 of original bill) was replaced by language adapted from S. 3158, the financial institutions bill (sec. 313, at pp. 6-12 of bill as passed by the Senate).

Mr. BOUTIN. Thank you very much.

The first of the points in the bill would enable SBA to revoke by administrative proceedings the license of any SBIC. Up to now through administrative proceedings we can only suspend.

Also licenses may be suspended or revoked for false filings with SBA. Up to now that has only been on matters pertaining to the obtaining of a license.

Cease-and-desist orders may be issued against individuals as well as against SBIC's. So instead of proceeding against a piece of paper, the Corporation can go to the managers and individuals responsible in fact for the action. Cease-and-desist orders are also authorized for violations about to occur, so that where we have prior knowledge and we know improper action is going to be undertaken we can tell them not to do it.

Violations by SBIC's shall be considered violations by individuals who took part in the actions that lead or are about to lead to violations.

Persons convicted of felonies or fraud may not act as principals of SBIC's without consent of SBA. With this authority we can ride herd on those who have bad records.

Also, SBA can bring suit and serve papers in the district of the SBIC's home office. Where we are bringing court action we can make service of process in the district where the SBIC is located or where the principals can be found.

SBA may act as court-appointed receiver of a bankrupt SBIC.

As an organizational matter, SBA will have one Deputy Administrator instead of three as at present. The deputy will act as an alternate to the Administrator in his absence and will be able to carry on the work of the agency. The three existing deputies, as a housekeeping matter, will be known as associate administrators.

SBA's annual report must contain a record of losses incurred in the previous fiscal year and loss estimates for next fiscal year.

Finally, persons controlling an SBIC may not use SBIC stock as collateral for loans to buy stock in that SBIC.

Mr. Chairman and members of the committee, this bill, as passed by the Senate, will give us some essential tools to police this industry, to do a better job and a quicker job of cleaning up some of the trouble spots, and will allow us then to concentrate on taking action and recommending legislation to the Congress that will serve as incentives, that will strengthen the industry and make sure it does a better job for small business.

The NASBIC, the association having a great many members among the SBIC's as I understand it favors the legislation and also it has the approval of the administration.

The CHAIRMAN. That is the SBIC association you mentioned?

Mr. BOUTIN. Yes, sir.

The CHAIRMAN. You state that that organization favors this particular bill as passed by the Senate?

Mr. BOUTIN. Favors the bill, the particular bill as passed by the Senate. They are here this morning.

The CHAIRMAN. The only opposition we have heard, Mr. Boutin, is about the procedure, not giving the person his day in court properly. What does your bill provide?

I believe the original bill stated that there would be a secret session in the event the agency desired it. I believe in the Senate they changed that, did they not?

Mr. BOUTIN. Actually it provided, in accordance with the Administrative Procedure Act, first of all that everyone will have his day in court, that in any action we take, we will have issued a show cause order and a hearing will be held and they will have an opportunity to present their side of the case equal to our opportunity to present ours.

The CHAIRMAN. That is your intention, to have it that way?

Mr. BOUTIN. That is exactly our intention.

The CHAIRMAN. May I ask Mr. Horne about that provision in his bill?

Are you satisfied with the Senate provision or would you be willing to go back to the original bill?

Mr. HORNE. I would be willing, Mr. Chairman, to go back to the original bill.

The CHAIRMAN. That would assure his day in court.

Mr. HORNE. Yes, sir. But under our legislation as it passed the Senate—I don't want to confuse two things in my own mind, I am not sure I understand completely your question—but I do want to say under the bill as it passed the Senate, accused person immediately has his day in court.

The CHAIRMAN. I yield to Mr. Fino.

Mr. FINO. Thank you, Mr. Chairman.

Mr. Horne, under this proposed legislation you are asking for what you call intermediate powers of suspension and cease and desist. Don't you feel that the present powers that you have, and which you said are pretty well satisfied with—the threat of moving in on a bank or the threat of removing officers or of suspending insurance—don't you feel that that is enough of a threat to get these fellows in particular banks to behave and comply with the rules and regulations of the board?

Mr. HORNE. No, sir. Let me state again, sir, so far as our final authority is concerned, we are not asking for any additional final authority. We are asking for intermediate authority to avoid having to take over a Federal or having to cancel insurance in a State-chartered association, because either of these two actions for all practical purposes puts that association completely out of business.

Presently we do not have any authority so far as suspension or removal is concerned. Under this proposed bill we would be granted such authority if the Congress gave it to us, and the Senate as I pointed out did grant it in a limited form.

But we have no authority whatsoever today to even threaten the removal of an officer or a member of the board.

Mr. FINO. In other words, your action has to be an ultimate one with respect to a bank?

Mr. HORNE. Yes, sir.

Mr. FINO. You can't say, "Look, fellows, unless you behave, I will suspend your license or I will suspend your charter or I will suspend your insurance or I will move in and take over the bank."

Mr. HORNE. I can say this.

Mr. FINO. Wouldn't this have the effect of making these fellows behave?

Mr. HORNE. No, sir. In many cases it does not.

Mr. FINO. You have had that experience?

Mr. HORNE. Yes, sir; more than once, sir.

Mr. FINO. You mean they just thumb the Board?

Mr. HORNE. In some cases, they have, sir.

Mr. FINO. How would this suspension or cease and desist work out? You would notify the bank that they are misbehaving?

Mr. HORNE. Yes, sir. As I explained we have two facets to our cease-and-desist provision. One is a temporary cease and desist. We would use this only in cases where the urgency of taking action makes it obvious that we should not be delayed while going through all the administrative procedure functions.

However, even under a temporary cease and desist the institution can immediately go to court within 10 days, and if the court agrees the court can stay our hands and our temporary cease and desist would not be effective at all. It would be stayed.

Now so far as a permanent cease-and-desist order is concerned, we go through the full administrative procedure and then when we issue a final order the institution within 30 days may appeal to court.

Then the court reviews it and the court determines whether they are right or whether we are right.

Mr. FINO. Mr. Horne, the chairman, Mr. Patman, has said that we have information on S. & L. operations that you say you will give to this committee in executive session?

Mr. HORNE. Yes, sir.

Mr. FINO. I do not have any such information. I think that the public and the millions of depositors in these S. & L.'s certainly have the right to know just why you think that you need this additional authority.

Now if a \$10 million bank were involved we would have 3 weeks of open hearings. Here we have S. & L.'s with billions of deposits involved and we talk about executive sessions.

To what extent has mismanagement endangered the depositors? We know of events in California and in Maryland. Now are there more that we are trying to keep from the public?

Mr. HORNE. You have covered several points, Congressman. Let me try to respond in this manner. The ones in Maryland to which you alluded were not federally insured or federally chartered associations.

We had nothing whatsoever to do with them. This is not to say we don't have a problem or two in Maryland, in associations that are federally chartered. But the incidents that happened in Maryland a few years ago related to associations over which we had no authority in any shape or form.

So far as the public having the right to know, I think you would want us to keep in mind that there are about 39 million people who have savings accounts in the savings and loan industry, that the total assets of the industry amount to about \$137 billion.

It not would be appropriate or fair, either to the Government or to the public, for the impression to be left with anyone that there is a great danger in the industry as a whole.

As I have emphasized, there are only 2 to 3 percent of the total number for associations about which we are concerned. We are concerned here, though, because there is a danger that if we cannot take corrective action and do not have authority to prevent such developments in the future, this small handful can impair the image of the industry as a whole and do much greater harm than the percentage of cases involved might indicate.

So far as the public knowing which of these particular associations we are talking about, we have to keep in mind two things. One is that if they are insured, the public up to the legal amount of the insurance is protected anyhow. A saver is going to get that money whether or not that association goes out of business or whether or not we have to close it down or whether or not developments force it to close down.

Another thing we have to keep in mind is that in a particular case if we do publicize, we could very well cause a run on that association that might worsen its condition, might very well make it more difficult to solve the problems that are involved in that particular association.

So it is not a case of feeling that the public ought not to know. It is not a case of trying to hide something from the public. The public

is already largely protected in these small numbers of cases that I am speaking of because they have our insurance.

But we do not want to worsen conditions. We don't want to create unnecessary fear on the part of the public as to the condition of the industry as a whole, and we don't want to worsen the estate of a particular association, or the possibility of solving the problem in that particular association, by advertising to the public that it has been mismanaged and is about to go out of business.

The CHAIRMAN. Mr. Horne, would you permit an interruption?

Mr. Fino, I think we should keep in mind that Mr. Horne is available for an executive session in the event you want one on this and I have an idea that the members will want to hear him in executive session so I think we could very well postpone examination and consideration of this at this time until after we hear the witness commencing Tuesday.

Congressman Pepper is here, who is, incidentally, a former member of this committee and is a member of the Rules Committee. He wants to be heard Tuesday and members of the savings and loan industry, at least one wants to be heard.

Before we end the proceedings I think we should keep in mind, Mr. Horne, we will probably want you in executive session.

Mr. HORNE. All right, sir.

The CHAIRMAN. Have you concluded?

Mr. FINO. For the present time.

The CHAIRMAN. Mr. Reuss.

Mr. REUSS. Thank you, Mr. Chairman.

I want to apologize for coming in late. But I am familiar with your position. I certainly agree, I will say at the start, on the need for this legislation. I do have a question regarding section 313(f)(1), which provides that administrative hearing for suspension or removal of the officer shall be private unless both sides agree to a public hearing.

Since this is a quasi-judicial proceeding affecting the operations of an important national program in which the public has an interest why should we have secrecy in those proceedings?

I grant you that this involves discreditable information about someone. Perhaps I should address my question to Mr. Boutin.

Mr. HORNE. Congressman, may I make four points in response to your question?

Mr. REUSS. Yes.

Mr. HORNE. Originally the bill permitted the agency to make hearings public for good reason. It was amended in the Senate to require the parties' consent and it passed in that form. Under present law, whether or not a hearing is public or private has been left up to the agencies.

I am not aware that there is concern about the practice under present law—there may be. We would be willing to live under any provision that permits some flexibility in accordance with the circumstances.

Hearings must be private—I thought I might point this out, sir—hearings, and findings must be private under the present removal procedures, in the banking field.

We do not have, presently, under our law any authority for suspension and removal. We are requesting such authority in the bill now before you, sir. But I thought I should point out that under the existing authority for removal in the banking field, the law does require that it be private.

Mr. REUSS. Let me ask Mr. Boutin specifically about the Small Business Investment Act. What about that provision that hearings be secret if either side wants them to be?

That means that you will have about 99 $\frac{44}{100}$ percent secrecy. Why do it, particularly in view of the fact that the cease-and-desist provisions—which involve, it seems to me, the same discreditable information—are, as I think they should be, open and not secret?

Mr. BOUTIN. As we presented the bill, as you know, Congressman, it provided for open hearings, public hearings. This was part of the compromise then in an effort to get legislation approved this session. For SBA's part, we cannot foresee any instances when we in fact will ask for a private hearing.

But it does afford some protection. I think the National Association of Small Business Investment Companies in its discussion on the Senate side has a legitimate point. It does afford some protection for the individual involved when he at least has the discretion of saying "Now I want this to be private."

Mr. REUSS. If I may say so, if he wants all that discretion he can disassociate himself.

Mr. BOUTIN. Yes, I understand. We would be perfectly willing to have this amended for our part. I have an idea that it will be objected to by people in the industry but I would hate to jeopardize the whole bill on this single matter of public or private.

We would be more than willing to have it reconsidered as an amendment to the legislation by the 90th Congress. We do not for our part, SBA's part, insist by any means on this discretion being there.

It was in the spirit of compromise that this language was changed.

Mr. REUSS. Thank you very much.

The CHAIRMAN. Mr. Ashley.

Mr. ASHLEY. Thank you, Mr. Chairman.

Mr. HORNE, do we have any definition of unsafe or unsound practices?

Mr. HORNE. I have a note on that, Congressman, that might be of some help if I can find it quickly, sir. I can provide examples of what we generally consider as unsafe and unsound practices for the record. I also have Mr. Walters here, who is familiar with this since he is head of the examinations and supervisory division.

In broad terms, it is one which is contrary to generally accepted standards of prudent operation, the possible consequence of which, if continued, is abnormal risk or loss or damage to the institution, the reholders or the Federal Savings and Loan Insurance Corporation.

ASHLEY. That is a matter of judgment, of course, is it not?

HORNE. It is to some degree; yes, sir. But our experience has us over the years some very good instances of unsound and un-
ices. For example, in the lending and investment field I have
s or 10 things here which we know from experience have con-
unsafe and unsound practices.

Mr. ASHLEY. I think I will yield to Mr. Hanna and in due course he can explore this further in relation to California where it was asserted that the institution was engaged in unsafe and unsound practices and this was disputed and years of litigation resulted.

Mr. HORNE. Yes, sir.

Mr. ASHLEY. When we are talking about penalties, additional remedies, I think they should be available to you and the Board and Mr. Boutin.

Nonetheless, I think that we want to know what we are talking about in terms of unsafe and unsound practices inasmuch as the institutions, you remember, will be held to this kind of standard subject to the remedies that you are requesting this morning?

Mr. HORNE. I agree with your observations, Congressman. I am prepared at the committee's convenience to be more precise so far as both the definition and the practices that have been unsafe and unsound practices.

Mr. ASHLEY. I think it might be well, as a matter of fact, Mr. Horne, if you could have your counsel or somebody give us a memorandum which could be inserted in the record. I think this is an important point and that it should be fully explained and developed in the record.

Mr. HORNE. I shall be very glad to do so.

The CHAIRMAN. You may submit it and we will include it at this point in the record.

Mr. HORNE. Fine, sir.

(The memorandum referred to follows:)

MEMORANDUM ON "UNSAFE OR UNSOUND PRACTICES" AS A BASIS FOR ISSUANCE OF
A CEASE-AND-DESIST ORDER

At the outset, it should be noted that the term "unsafe or unsound," as used in the cease-and-desist provisions of S. 3158, is not a novel term in banking or savings and loan parlance. The words "unsafe" or "unsound" as a basis for supervisory action appear in the banking or savings and loan laws of 38 States. For more than 30 years, "unsafe or unsound practices" have been grounds for removal under section 30 of the Banking Act of 1933, of a director or officer of a member bank of the Federal Reserve System. See 12 U.S.C. 77. It has been grounds since 1935 for the termination of insurance of a bank insured by the Federal Deposit Insurance Corporation. See 49 Stat. 690, 12 U.S.C. 1818(a). "Unsafe or unsound practices" have also been grounds for termination of the insured status of an insured savings and loan association since the 1954 amendment to section 407 of the National Housing Act. See 68 Stat. 633, 12 U.S.C. 1730.

However, despite the fact that the term "unsafe or unsound practices" has been used in the statutes governing financial institutions for many years, the Board is not aware of any statute, either Federal or State, which attempts to enumerate all the specific acts which could constitute such practices. The concept of "unsafe or unsound practices" is one of general application which touches upon the entire field of the operations of a financial institution. For this reason, it would be virtually impossible to attempt to catalog within a single all-inclusive or rigid definition the broad spectrum of activities which are embraced by the term. The formulation of such a definition would probably operate to exclude those practices not set out in the definition, even though they might be highly injurious to an institution under a given set of facts or circumstances or a scheme developed by unscrupulous operators to avoid the reach of the law. Contributing to the difficulty of framing a comprehensive definition is the fact that particular activity not necessarily unsafe or unsound in every instance may be so when considered in the light of all relevant facts. Thus, what may be an acceptable practice for an institution with a strong reserve position, such as concentration in higher risk lending, may well be unsafe or unsound for a marginal operation.

Like many other generic terms widely used in the law, such as "fraud," "negligence," "probable cause," or "good faith," the term "unsafe or unsound practices" has a central meaning which can and must be applied to constantly changing factual circumstances. Generally speaking, an "unsafe or unsound practice" embraces any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds. The categories set out below are illustrative:

1. Solicitation of capital on the basis of dividend rates in excess of the association's ability to pay except by resorting to high-risk loans; and the acceptance of savings subject to the condition that the person directly or indirectly placing the savings capital in the institution would be granted loans by the institution involving risks which the association would not otherwise assume.

2. Investments in loans on the basis of overappraisals of the security property; overconcentration of loans to speculative builders or in loans in declining or run-down areas; disbursement of loan funds on construction in progress without proper safeguards for the association's security for the amounts advanced; loans to builders who are already delinquent on loans secured by properties that the market cannot absorb; disregard of a borrower's incapacity and inability to repay his loan; and lack of any systematic collection program.

3. Management and disposition of property, acquired through foreclosure, in a manner which fails to convert the assets into income producers; accounting procedures which fail to show correctly the condition, operation, and trends of the institution, thus providing misleading information for management decisions; lax control of expenses; careless physical control of the assets; excessive advertising or other costs beyond the ability of the association to absorb the expenses; maintenance of substantial compensating balances in banks for the benefit of others; diversion of fee income to others without benefit to the association; failure to provide for adequate liquidity; and failure to make adequate transfers to reserves for absorbing losses.

The attachment hereto, which contains extracts from some of the Board's "section 407 letters" commencing termination of insurance proceedings against problem institutions, provides specific examples of the type of activities which have formed the basis of the Board's charges of "unsafe or unsound practices" in actual cases. It should be understood that in cease-and-desist proceedings based on such grounds under S. 3158, there would have to be a factual showing on the record which succeeds in convincing the hearing examiner or the Board, and then the reviewing court, that the particular practice in the particular case should be characterized as "unsafe or unsound," and a cease-and-desist order issued.

ATTACHMENT TO MEMORANDUM ON "UNSAFE OR UNSOUND PRACTICES"

I

"[The association] has carried on an advertising campaign of excessive cost in relation to its gross operating income, such cost during each of the three 6-month dividend periods preceding March 31, 1963, having been from 13.5 to 17.4 percent of gross operating income, whereas the cost of advertising for insured savings and loan associations of comparable size in Cook County, Ill., average 2.6 percent of gross operating income.

"Largely by means of [the association's] giveaway program, its use of brokers, and its advertising campaign, as set forth in subparagraphs (a), (b), and (c) of this paragraph, it has increased its savings capital at a rate far greater than its management has been able to invest in sound mortgage loans [as evidenced in part by the fact that, 'delinquent loans and real estate owned totaled \$458,000, or 4 percent of net assets at November 21, 1961, but had increased to \$3.8 million or 12 percent of net assets at March 31, 1963'], its savings capital having increased from \$2.2 million, as of September 24, 1960, to \$29.2 million, as of March 31, 1963.

"Without prior approval of the association's board of directors, the said [chairman of the board of directors of the association] caused the association to pay out approximately \$1,200,000 to contractors for the installation of alleged 'leasehold improvements' to the building later occupied by the association. Part of 1 funds were expended for improvements benefiting the entire building, and

thus were for the personal benefit of the said [chairman of the board of directors of the association, who owned the building] and his wife.

"The said [chairman], on April 3, 1963, without authority or subsequent ratification by the association's board of directors, caused the association to pay out, for his personal use and benefit, approximately \$550,000, allegedly for 'advance rent' for occupancy of the new building by the association. Although the association's board of directors has requested repayment of such funds, the said [chairman] has repaid only approximately \$30,000 thereof."

II

"As early as 1962, the association entered into a program of out-of-State advertising and use of brokers to effect an abnormally rapid savings capital expansion. For the 2-year period 1963-64, the savings capital expanded by approximately 270 percent, from \$7 million to \$26 million. In spite of savings capital growth of \$9.7 million during 1964 the association generated additional loanable funds by the sale of \$6.7 million of participations and \$1.1 million of advances from the Federal Home Loan Bank of San Francisco. Concurrent with the increase in loanable funds, the association entered into a hazardous lending program as follows:

"During 1963, the loan portfolio was increased by \$16 million, or 200 percent; * * * During 1964, the association granted \$13.6 million loans (one-third for construction) despite indications of overbuilding.

"The association failed, in approving loans, to consider the borrower's credit history, stability, character and ability, or intent to repay. The association granted 26 loans aggregating over \$900,000 to a multiple borrower whose credit report disclosed a slow payment performance and three prior bankruptcies. As of November 11, 1963, that borrower accounted for 37 percent of the \$2 million of delinquent loans, and was again in bankruptcy. As of February 22, 1966, 27 borrowers were involved in bankruptcy proceedings.

III

"During the period set forth in paragraph 1 above and in various instances in connection with the loans therein specified and others, [the association] made and disbursed loans without regard for the financial responsibility of the borrowers, without any security, without proper regard for the adequacy of the security, in advance of the progress of construction, without proper inspection of the progress of construction, without determining that loans were secured by first liens, without adequate appraisals or on the basis of appraisals furnished by borrowers; it unduly concentrated its loan risk both as to borrower and as to security properties; and it delegated the responsibility for the disbursement of loan proceeds to a company affiliated with large borrowers, including the proceeds of loans made to borrowers affiliated with such company without the exercise of proper control over, or accountability for, such funds.

"Despite the increase in delinquent loans and in other low-earning problem assets which have caused prospective losses and have also caused such a deterioration in earnings as to render income insufficient to pay promised dividends and to meet the need for reserve allocations, as more fully described below, the association has continued and still continues [during 1962] its widespread advertising campaign for savings on a promise of continuance of the 4½ percent dividend plus one-half percent bonus on accounts remaining over 4 years.

IV

"Construction lending represented 35 percent of the loans granted during this period and the procedures used in processing this heavy concentration were inadequate, in that plans and specifications were not on file; inspection reports were not on file to indicate that property inspections had been made prior to disbursements; sufficient funds were not retained in the loans-in-process account to insure completion of construction; and cash deposits or lien waivers were not obtained for the full difference between the estimated cost of construction and the amount of the loan."

V

"In the face of the rapid increase in the association's slow loans and real estate owned over the past 2 years, as detailed in paragraph (b) above, the association has granted new loans, in substantial amounts, to builders and/or specu-

lators then delinquent in their payments on other loans, and has granted new loans, at higher loan amounts, to builders and/or speculators on the security of properties which were the security for previous delinquent loans to other builders and/or speculators.

"As examples—

"* * * During 1962, the association granted 112 loans, each in the amount of \$19,600, to finance the construction of townhouses. Between April and July 1963, when the 112 townhouses were completed but all of these loans were delinquent, the loans were repaid out of the proceeds of 112 new loans on the same properties, each in the amount of \$21,800, to 3 new borrowers having little or no equity in the properties. An additional 51 loans, each also in the amount of \$21,800, were granted to the same 3 borrowers to build 51 new townhouses in the subdivision. By March 25, 1964, payments on all 163 loans in the aggregate amount of \$3,671,608 were delinquent. The refinancing of the 112 loans at \$21,800 each and the granting of the 51 additional loans at \$21,800 each was made notwithstanding the fact that the association was in possession of an independent appraisal which valued a representative property at \$19,700, and which, after pointing out that the townhouses were being used as rental properties, stated that 'there are several projects in the vicinity and indications of overbuilding * * *' and 'it is doubtful if a unit in one of these townhouses would appeal to the average buyer of a townhouse expecting to live in a normal suburban environment.'"

Mr. ASHLEY. Paragraph 5 of title I provides for suspension of the director or officials in charge by a U.S. attorney upon committing a felony involving dishonesty or breach of trust.

This is in contrast to the language in subsection (p) which prohibits an insurance association from having an officer or director or employee who has been convicted of any criminal offense involving dishonesty or breach of trust.

Why does the more serious crime of felony require suspension under paragraph 5?

Mr. HORNE. May I ask general counsel to respond to your question?

Mr. SCOTT. I think the distinction that is observed in the bill on this point is the distinction between a conviction, which is in the latter section you referred to, and the bringing of a charge or an indictment, which of course is something less than conviction.

In the case of a charge or indictment, as in the suspension provision, it is limited to the more serious category of charge; namely, felony.

Mr. ASHLEY. Under State law in the case of breach of trust where a U.S. attorney is not entitled to make a charge, you could not suspend under paragraph 5 in such a case?

Mr. SCOTT. If there is an indictment against the person for a felony under State law that would be covered by section 5. The only place that section 5 is limited to the Federal Government is with reference to the U.S. attorney authorizing a complaint.

I would say it would not be necessary that one stop there as we have in the bill. The bill was drawn, I suppose, on the premise that we were dealing with the Federal family of agencies and Federal authority.

It would be possible in logic to go beyond this.

Mr. ASHLEY. How do we distinguish, is there a legal distinction with respect to personal dishonesty? And breach of trust?

Mr. SCOTT. I am not sure I understand your question.

Mr. ASHLEY. Doesn't the legislation refer to personal dishonesty?

Mr. SCOTT. I think the content of the term comprises, for example, the kinds of things for which one would be subject to criminal indict-

ment. On the other hand, it is intended not to encompass, as did the original bill, for example, incompetence.

Mr. HORNE. In further response to that, Congressman, if I may add something to what Mr. Scott has said, early in my statement I believe I remarked that we had narrowed considerably in this particular area the provision that was carried in the original bill.

We have narrowed this to personal honesty.

Mr. ASHLEY. By—well my thought is simply whether we know what we are talking about when we say personal dishonesty. Is there any legal definition on which we can rely or the courts?

Mr. HORNE. I believe from our personal experience there are some cases I could cite which indicate what we have in mind as to personal dishonesty. What we have in mind is often something so obvious that hardly anyone could question whether or not the person had acted dishonestly.

Mr. SCOTT. The term is intended to be a generic term that would encompass primarily, but not exclusively, the kinds of things that are actionable under the various State and Federal criminal statutes.

Mr. ASHLEY. When we talk about personal dishonesty you indicate something that is self-dealing. I don't know whether this is intended to draw a distinction between self-dealing dishonesty and some other kind of dishonesty.

Mr. SCOTT. No, I would say that committing some kind of fraud on the association or if the person is dipping into the till and lining his own pocket—these are among the kinds of things that the section certainly is intended to reach.

Mr. ASHLEY. Finally, would S. 3158 affect those savings and loan members of the Home Loan Bank Board using credits which are not of FSLIC insured?

Mr. SCOTT. The two sections of title I represent an amendment to the Home Owner's Loan Act, which governs Federal associations and to the National Housing Act, which deals with insured associations.

A bank member, noninsured, would largely lie outside of the provisions of this bill—not 100 percent because there are some things relating to the scope of the examination authority and matters of this sort that might be pertinent still.

Basically you are right as to cease-and-desist procedures, or suspension and removal, they would not lie within the confines of the bill.

Mr. ASHLEY. Thank you.

The CHAIRMAN. Mr. Harvey.

Mr. HARVEY. I must say, Mr. Chairman, I certainly would urge an executive session as I have heard suggested here this morning. I have a very difficult time understanding the reasons for the secrecy attendant upon the discussion here this morning.

This reflects back to what has happened in the last year or so. I can recall that Senator McClellan over in the other body held extensive hearings involving the San Francisco National Bank and the various things that were going on there.

Yet none of the members of the banking industry took offense at that and it did not do any harm to the banking industry that these things were revealed in public and so forth.

I recall that our chairman here and his subcommittee dealing with the Norfolk, Va., bank exposed certain practices that had taken place. I don't believe those were harmful to the banking industry as a whole.

The CHAIRMAN. Don't you think there is a difference between a bank that is closed and one that is not closed?

You see, the San Francisco Bank had actually closed.

Mr. HARVEY. I don't know, Mr. Chairman, because we don't know the facts. Maybe after we have had the executive session and we have the facts then I would agree with you. Here we are talking about 2 or 3 percent of the savings and loans.

Is that right? That is the figure I heard discussed at any rate. If that is the case I can't believe that revelation of facts pertaining to this small segment of the industry would be harmful to the industry as a whole. That is my offhand reaction.

Mr. HORNE. After you heard testimony in executive session, Congressman, of course the committee if it chose to do so, could release that testimony. But we do have evidence already sir, from mail that comes to my office and also remarks from industry itself, that express some fear about my having said publicly even as much as I have already—about the adverse effect that they feel it is having on the industry itself.

Mr. HARVEY. I certainly would not want to do anything to hurt the industry as a whole. I think you can understand, these are harsh remedies that you seek here today. I don't think that a cease-and-desist order is so harsh but I think the removal of a director is a harsh remedy.

I certainly would not want to vote on it, myself, without knowing what you are talking about here.

Mr. HORNE. I will be very glad to supply that, sir, as the chairman again has indicated, in executive session. Let me emphasize if I may, sir, again—I am not sure you were here when I emphasized this point—what we are actually asking for here is intermediate authority to avoid having to use the harsh authority which we already have.

The harsh authority putting the association out of business. The authority we are asking for here is less harsh than what we presently have, and what we have to use because we don't have this intermediate authority. This is the point I keep on emphasizing: that I am trying to avoid putting an association out of business if we can prevent having to do so.

Mr. HARVEY. I can understand your reasoning but of course not knowing the background I don't know whether it is justified or not. As I say, I have difficulty with those two points at the present time.

My first inclination is to say that these facts should be made public.

I would certainly urge that we do have executive sessions, Mr. Chairman, before we act on this bill.

Mr. HORNE. I may—may I make one more comment to Congressman Harvey's inquiry?

I share your feelings, sir, that things that are not necessarily confidential, for the public's protection should not be treated with secrecy. I believe the banks to which you refer were closed at the time. Now in

my testimony I gave a pretty elaborate description of an association, and I call its name, which has already closed.

I should think, though, that if publicly I talked about some associations that are in trouble, and identified them by name and location and so forth, we might make the existing situation worse than it is and we might do the public welfare more harm than if we tried to solve them without publicizing the condition that they are in.

But there is no hesitancy whatsoever on the part of this Board to reveal publicly those that have already been disposed of.

As I have said, after my testimony, in which I will be prepared if the committee wants me to do so to identify those that are presently in difficulty by name, by amounts, by location, if the committee should see fit to make it public, that would be the committee's decision.

I would be hesitant, myself, to do so without the committee knowing and being fully informed as to what the situation is and the possible harm, and the committee having the right to weigh what the consequences might be if we did reveal their names.

Mr. HARVEY. I will await the executive session, Mr. Horne, before going further. That is all.

The CHAIRMAN. Mr. Gonzalez.

Mr. GONZALEZ. The question I have at this point had already been asked by Mr. Reuss, but at this point in view of this *Beverly* case I wonder if you can tell us how this legislation would help you prevent such an occurrence?

Mr. HORNE. In the new legislation we are proposing there are several respects in which a cease-and-desist order could have been helpful, or removal could have been helpful.

For example, if you will refer to page 7, sir, and look at the second sentence of the last paragraph. It says:

The association undertook a program of rapid increase of savings capital, accomplished through the use of money brokers to an extent that violated the regulations of the Insurance Corporation.

A cease and desist could very well have been helpful in this respect. On page 8, the first sentence:

In addition, association officials began making substantial and excessive loans that redounded to their own benefit, in one instance by the device of making loans totaling more than \$1 million to the manager of another savings and loan association who returned the favor.

This is also where cease and desist could have prevented at least any more occurrences of that sort.

Then the very last sentence in that first paragraph:

To help build the building, he took \$1.1 million of association funds under the guise of leasehold improvements, which he had, therefore, no obligation to repay; he also decided it would be nice to have 4 years' rent in advance, and helped himself to another half million dollars for that.

I think that this is fairly obviously a case of personal dishonesty. This might very well have been grounds for suspension or removal.

Mr. GONZALEZ. According to this, the hankypanky began in 1961 but it was not until some examination in 1963 that anything was noticed to the point where the notice of insurance cancellation was given. How would this legislation help them?

It seems to me this was a pretty long period of time to wait, 3 years.

Mr. HORNE. Congressman, your point may be well taken in this regard. Let me emphasize two points though. Prior to the time that I mentioned in this testimony, we had already been in touch on several occasions with that association, with its managers, and with its board of directors. Using the only authority we had at that time and the only authority we have today other than cancellation of insurance, we tried to persuade them, we talked to them, we told them what mistakes they were making and we suggested corrective measures, but they refused to follow our advice.

Since cancellation of insurance is such a drastic remedy, we have wanted to build up a substantial enough case that if we finally had to resort to cancellation we would be able to support adequately and properly our reason for doing so.

It may be that in some cases we have been too patient and it may be that if we should not get the kind of legislation we are now suggesting, we would have to be less patient in the future than we have been in the past.

As I say, because getting rid of an association is drastic and because we can have our hands called as in the case of Congressman Ashley referred to—whether that was justified or not, I am not at this time making any further reference to that because I was not then with the Board and am not entirely familiar with it—but in that case a committee of Congress did say that the Board had acted too hastily.

For those two reasons, we may not have moved into this particular situation as rapidly as we should have. But the fact remains that we did try to move without canceling. Our efforts had no effect. Finally when we started the cancellation procedure we had to wait 120 days under the statute before we could take further action.

Mr. SCOTT. As a matter of detail, it happened in this particular case that there were some smaller forerunners to the fairly large transactions referred to in the chairman's statement, and the resignation of the managing officer was requested of the board of directors in 1960.

Mr. HORNE. If you would like to have it sir, I could supply you or the committee with what took place earlier than the matters to which I made reference in my testimony on this particular case.

Mr. GONZALEZ. The point I was interested in was making sure that this suggested legislation would be helpful to you in preventing a recurrence of that type of thing.

Mr. HORNE. Yes, sir. I appreciate your point. It is well taken.

The CHAIRMAN. Mr. Hanna.

Mr. HANNA. Thank you, Mr. Chairman.

I wish to express my appreciation for the fine testimony being given by both witnesses on these two very important bills. I ask both of the gentlemen whether or not it has been the practice in the past for your organizations to keep written records in any of the hearings that you have had on any charges which you lodged which are subject to hearings?

Mr. HORNE. Yes, sir; we do have.

Mr. BOUTIN. We do at the SBA, Congressman Hanna.

Mr. HANNA. I would ask Mr. Horne specifically would your development of the memorandum on what has been determined to be incidents of unsafe and unsound practices extracts—include extracts from those hearings?

Mr. HORNE. Where hearings have been held in such situations, yes, sir. But I want Larry Walters and Ken Scott to be more specific, sir.

I don't think there have been hearings under our present authority, except for the issuance of section 407 letters—407 letters are where we give notice of cancellation of insurance.

We could give excerpts in such cases as that, sir, because this is where hearings or formal charges have taken place.

Mr. HANNA. The committee would be interested in having demonstrated that there is a point of reference for determination by anyone who has a question as to whether or not there is an unsafe or unsound practice. At least some indication where it can be determined by a person, who wants to go to the trouble of finding out, what the remedy has been by this Board at that time in applying the reference.

There has been some indefiniteness in saying unsafe and unsound. My criticism of this and other kinds of boards is where two things occur. No. 1, the business judgment of the practicing institution is simply substituted by the business judgment of those who are on the board.

No. 2, where the board with the benefit of hindsight could simply come in and say, well, that was a poor judgment. It reminds me of a Senator who went down South going through a rather hot campaign. His opponent kept bringing up a vote he had made.

The Senator kept saying he did not make it. Finally both candidates got to their last meeting. The challenger waved the Congressional Record. He said, "Now gentlemen, here is the Record. It says on such and such a date you made this vote. It is in the Record. What do you say?"

He said, "All I can say is that that was a damn poor vote."

In hindsight maybe we could all agree something was unsafe or unsound. I think these are two points wherein institutions hope they will be protected, that it is not simply the benefit of hindsight nor would it be an arbitrary act of substituting one person's business judgment for another.

I hope that we can be assured this will not be the case in either instance.

Mr. HORNE. Congressman, I share the observation you have made, sir. In addition to that, I want to repeat something that I said to Congressman Ashley a few moments ago. In this additional information that both of you want that will be inserted in the record, I shall be glad to list in two or three categories a series of specific things which our experience over the years showed us have been unsound and unsafe practices because they have resulted in the demise of several associations and several now in difficulty.

Mr. HANNA. I suppose that is true of your position, Mr. Boutin.

Mr. BOUTIN. Our situation is somewhat different, Congressman, from Mr. Horne's and the savings and loan industry.

I think the Congressman only has to go back to the hearings held by Senator McClellan and his Permanent Subcommittee on Investigations in August to see the very real need for this legislation.

I refer the Congressman particularly to the bottom paragraph on page 10 and the testimony on page 11 of my statement which has been submitted for the record which tells you precisely how we intend to conduct ourselves if this legislation is approved.

Mr. HANNA. I have only two other questions, Mr. Chairman, and these can be answered by insertion in the record. The first question pertains to the totality of the bill. If I read Senate bill 3158 right, this bill applies not only to the Federal Home Loan Bank Board but also to the FDIC and to the Comptroller of the Currency.

Mr. HORNE. Yes, sir, and to the Federal Reserve Board.

Mr. HANNA. To the Federal Reserve Board?

Mr. HORNE. Yes, sir.

Mr. HANNA. Are we going to hear from all these persons, Mr. Chairman?

The CHAIRMAN. We will have statements from them.

Mr. HANNA. Are they all in favor of this bill in its present form?

The CHAIRMAN. It is my understanding that they are in favor of it. We will have statements from them. We have the one from the Treasury now.

Mr. HANNA. The other question I wish to ask pertains to the language on page 42 of the bill which provides for ancillary provisions in carrying out examinations attendant to the new powers.

It says that the cost of examinations will be assessed against the institution. My question is, Have you ever had a complaint that examinations were made and unreasonably carried out so that the cost could be assessed as a matter of just putting pressure on an institution?

Mr. HORNE. We have had complaints both ways, Congressman Hanna. We have had a few comments. I will say in all honesty they are not very many. We have had a few who have complained about the excessive cost of examination, about the long period of time that the examiner has stayed in the office.

We have also had letters praising us for the expeditious manner in which the examination was conducted. I should think this is an area in which you are never going to satisfy completely all the associations that you are examining. We think on the whole, though, in the past 2 or 3 years we have improved considerably our examining procedure.

We have done all we could to give more consideration to those whose past experience shows are running a good association. Where we have evidence that something is wrong, we, of course, make a more thorough examination. It is usually in the latter situation where we sometimes have a complaint, but we have not had many in either instance.

Mr. HANNA. Thank you.

The CHAIRMAN. Mr. Clawson.

Mr. CLAWSON. Thank you very much, Mr. Chairman.

I want to welcome Mr. Boutin and Mr. Horne. I join, however, with my colleague from Michigan, Mr. Harvey, in the desire for an executive session. The bills relate in principle to the kind of activities with which I think SBIC as well as the savings and loan industry are concerned.

I would like to ask Mr. Boutin this question in connection with his testimony. The SBIC's are new in comparison with the savings and loan industry. The savings and loan institutions have experienced a tremendously dramatic buildup during the last two decades in the volume of savings and loan activity.

What has been the experience in the SBIC since 1958? Has the progress been gradual, constant, or have we a record of any dramatic increase in the activity in investment in recent years?

Mr. BOUTIN. It has had peaks and valleys, Congressman. We have presently 687 licensed SBIC's. They have loaned up to the present time about a billion dollars to small businesses, both in providing equity capital under section 304 and long-term loans under 305. The big peak in licensing was in the period of 1961 and 1962.

Last year we only licensed 10. This year we are forecasting 40. Over the next 5 years we are contemplating licensing about 250. But there is going to be a substantial fallout in the interim. We are forecasting as an example that licensed SBIC's will drop from 687 to 599 as of June 30, 1967, the reason being that many of those we have licensed now are inactive. They have a license, they have some money in the bank, they may be buying some Treasury bills, but they are not fulfilling the mandate of the Congress in providing assistance to small businesses.

We are making a major effort to get the "ne'er do wells" as well as those inactive companies out of the program so that we can then concentrate on the positive aspects of strengthening those that remain.

Mr. CLAWSON. Would this involve revocation of the license?

Mr. BOUTIN. Yes, indeed.

Mr. CLAWSON. Do you have that authority now?

Mr. BOUTIN. We have the authority to revoke now only by going to the courts. We are asking in this legislation for power subject to review by the courts, to revoke by administrative proceedings.

Mr. CLAWSON. You are not eliminating judicial review?

Mr. BOUTIN. No; we are not. Actually it follows generally a four-step procedure. First of all a show-cause order, then hearings under the Administrative Procedure Act, then a provision for appeal to the Administrator by the SBIC or the individual involved and finally the provision that they can appeal to the court for review of the entire proceeding.

So there are safeguards built in here, Congressman.

Mr. CLAWSON. Is failure to meet the need under the SBIC bill a violation of the law and regulations?

Mr. BOUTIN. Yes; it is a violation of law. I must say to this committee, Mr. Chairman, in all candor, that one of the problems with the SBIC industry has been its administration by SBA. I would be less than candid if I sat here this morning without saying that.

Mr. Horne was talking to Congressman Hanna about examinations. I am sorry to say that we can show instances where SBIC's were not examined for 2, 3, and 4 years. All at once we find ourselves with a handful of trouble. We are changing that.

We are now insisting on annual examinations and we are in the middle of a program right now, where every single one of our SBIC's will be examined by the first part of November.

So we will have a plateau of knowledge on which to build.

Mr. CLAWSON. Of the present 687 licensees, how many would you say might fall among those who need an investigation with the result that a revocation of license might follow?

Mr. BOUTIN. I would say, Congressman, and this is the best estimate I can give you from the examinations that have come in this far

since we started the program the 13th of July, that we will probably come up with figures that will look roughly like this.

About 85 companies will voluntarily surrender their licenses because they are either inactive or because they just are unwilling to comply with the law and the regulations.

We may have another 200 or thereabouts, 175 to 200, that may result in investigations where the examinations show clear violations, willful violations of the regulations or of the law itself.

We probably will have more investigations than that. But I would guess, out of the total number of investigations that we will have, that we probably will revoke somewhere in the vicinity of a hundred licenses between now and the 1st of March, maybe before then.

Mr. CLAWSON. Thank you very much.

Mr. Chairman, I would like to again say that I believe we could profit from an executive session.

The CHAIRMAN. I am quite sure we will have one but I would like to have more of the members here, to make sure that they are in accord with the views expressed. Personally, I favor them. Mr. Gettys?

Mr. GETTYS. Mr. Chairman, thank you, sir.

Mr. Horne and Mr. Boutin, I join my colleagues in welcoming you to the committee and thank you for coming and for your clear and informative statements on the subject.

One of the matters that disturbs me some is one mentioned by Congressman Ashley. That is the clarification of what unsafe and unsound practices really are. You know, to give administrators sort of arbitrary power to determine that subjectively is going pretty far. Will either of you comment on that?

Mr. HORNE. I shall be glad to comment in this respect, sir. I agree completely with what I understand to be your intimation, and that is that any regulatory agency should be very careful how it applies whatever power it is granted by Congress.

Congress, of course, as you know much better than I, sir, cannot define in every detail the way they would want the administration to be carried out. So this puts a heavy responsibility on the regulatory agency that it not abuse any power that the Congress might give it.

I should say if anyone does he could not live very long under it because his hands would be called by congressional committees.

Mr. GETTYS. You are familiar with the U.S. Office of Education?

Mr. HORNE. I know what it does, sir, generally.

Mr. GETTYS. That is a fine example of exactly what I am talking about at this point. They have gone far beyond what the statute intended.

Mr. HORNE. I would say also sir, even under existing legislation, and this has been true not only of this agency but other agencies generally, Congress has felt it necessary in the past to leave some leeway to the agency in administering unsafe and unsound, and unsafeness and unsoundness has generally applied throughout the Federal agencies.

Mr. GETTYS. But you agree that that is a problem in connection with this particular legislation?

Mr. HORNE. Yes, sir; I recognize the issue. I would like to make one further remark, sir, if I may. During the more than 30 years that

this Board has been in existence, while I sometimes hear fears expressed that it might abuse its authority, I think there have been only three instances in the past 35 years in which even the savings and loan industry has alleged that the Board has abused its authority.

Mr. GETTYS. Thank you for your comments. There is one other thing I would like to inject at this point. That is the dual system of savings and loans and banks, Federal and State.

What would be the relationship between the Federal and State authorities in connection with the administration of this power of absolute removal and so forth? Do you cover that in your statement?

Mr. HORNE. Yes, sir; I cover it in the statement. May I just make one or two remarks without reading my statement? First, I believe in the dual system. Second, there are some problems here which we can get at in executive session if you prefer to do so.

Third, whatever authority we would be granted under this legislation we would be required, and I agree with this, before we could use the cease and desist or suspension and removal authority, to consult with and give the State authorities the first opportunity to move.

Mr. GETTYS. Where they have State authority?

Mr. HORNE. Many States do not have the authority for suspension and removal.

Mr. GETTYS. But your idea would be to give the State the first opportunity to exercise whatever disciplinary action it has?

Mr. HORNE. Yes, sir. We do that even today, Congressman, without it being set into the law. But that would be required in the legislation and we are in favor of that requirement.

Mr. GETTYS. I have one other question. Where there are State boards, bank control agencies, or whatever they are called throughout the country, have you consulted them with regard to this particular legislation and have they taken a stand on it so far as the S. & L.'s are concerned?

Mr. HORNE. Mr. Chairman, Congressman Gettys has asked a very pertinent question. I wonder, sir, if I may point out in answering his question that in legislation, as you gentlemen know far better than I do, it frequently is a consensus of what Congress as a whole thinks it should be.

The reason I say that is to emphasize that in preparation of the legislation now before this committee, this Board and the regulatory agencies have worked not only together among themselves over a long period of time but we have worked with and consulted with industry spokesmen and State savings and loan supervisors.

I would not want to leave the impression that they are all in accord with every detail of this legislation, but I should like to point out in this connection that the U.S. Savings & Loan League, which has in its membership 95 percent of the assets of this industry, and the American Bankers Association, did support this legislation as it came out of the Senate.

The savings and loan supervisors were consulted, to answer your question specifically, and in general they also supported it. They did make several recommendations, some of which were accepted. The specific section to which I referred a moment ago, which has us consult with them prior to taking action ourselves, involves one of the recommendations they made.

Mr. GETTYS. Thank you, Mr. Horne, and thank you, Mr. Chairman.
The CHAIRMAN. Mr. Hansen.

Mr. HANSEN. Thank you, Mr. Chairman.

Mr. Horne, at the bottom of page 7 you tell us that the *Beverly* case was converted from mutual to stock in 1961. Was that in the early part of 1961 or the latter part of 1961?

Mr. HORNE. I do not know the exact date, sir. I think it was in the early part of 1961. Maybe Joe Misiora has this.

Mr. SCOTT. We will have to supply that.

(The information referred to follows:)

The Beverly Savings & Loan Association, Chicago, Ill., converted from a mutual to a capital stock association on September 27, 1961.

Mr. HANSEN. Then after outlining all the things that happened in that paragraph and the following paragraph you state that the transactions were revealed by an examination early in 1963.

Mr. HORNE. These transactions were.

Mr. HANSEN. Evidently it was not corrected and indicated that while the cat was away the mice played. What I am curious about is what is there in this new legislation that would make it either mandatory or possible for your agency to keep closer tab on a situation of this kind that evidently was not done in this case?

Mr. HORNE. If you will look at the same paragraph to which you have referred, in the second sentence of that paragraph, cease-and-desist action would have been very helpful.

Mr. SCOTT. There is a provision in the bill for improved effectiveness on the part of the examiners, in being able to trace transactions when they cannot be fully understood except by going beyond what the records of the institution may contain.

This provision in the bill, which the chairman also refers to in his statement, would be helpful with regard to making more effective the examination function and its ability to ascertain these kinds of transactions and follow them up when you spot them.

Mr. HORNE. On that point, the last sentence in that first paragraph—

Mr. HANSEN. I am not trying to put you on the frying pan, you understand.

Mr. HORNE. I understand.

Mr. HANSEN. But this statement covering this set of facts somewhat by inference at least indicates that there was not much of a look taken at this situation for almost 2 years or a year and a half.

Mr. HORNE. No, sir; I explained a few minutes ago that prior to the incidents related here we knew that things were not being carried on properly.

We met with the board of directors and with the management prior to the episodes that I gave here, sir. The only thing we could do was either persuade them to cease or to cancel the insurance down the road.

Mr. HANSEN. I see, in other words, you were not in a position to really press the issue under present legislation?

Mr. HORNE. No, sir.

Mr. HANSEN. To the extent that you feel should have been done?

Mr. HORNE. That is right, sir.

Mr. HANSEN. Would it be possible with the passage of this measure?

Mr. HORNE. Yes, sir.

Mr. HANSEN. Thank you very much.

The CHAIRMAN. Mr. Stanton.

Mr. STANTON. Thank you, Mr. Chairman. Good morning, gentlemen.

Mr. Boutin, attached to your prepared statement there is a comparison between S. 3695 as introduced and as passed by the Senate. I notice the deletion of a paragraph authorizing the SBA to examine small firms receiving financial assistance from SBIC's where the Administrator considers such examination necessary or proper.

Mr. BOUTIN. That is right.

Mr. STANTON. Doesn't that greatly weaken your present authority?

Mr. BOUTIN. We have authority, Congressman. The Administrator may order an investigation. We can go in and examine and then evaluate the portfolio companies and the small business concerns. The National Association objected very strongly to having this as part of our examination procedures for fear that it would be abused.

I would have preferred to have that section remain in the bill, but again in the interest of compromise in getting legislation that we badly need right now, not waiting for the 90th Congress, we agreed to that deletion, to be reconsidered in January when the Congress returns.

Mr. STANTON. Thank you. Mr. Horne, on page 3 of your statement, at the top, it says over the last 3½ years the Corporation has incurred liabilities or estimated losses in excess of \$80 million.

You then go on to say, while it is large, it is not enough to strain the resources of the Insurance Corporation. What are the total resources of the Insurance Corporation at this time?

Mr. HORNE. The last figures indicate it is hitting \$1¾ billion.

Mr. STANTON. Thank you very much. That is all, Mr. Chairman.

The CHAIRMAN. Let me see where we are. I assume today will finish Mr. Boutin's testimony since the national association of SBIC's has endorsed this legislation.

Mr. BOUTIN. That is correct.

The CHAIRMAN. They will file a statement, I assume, and there is no opposition. When we get a quorum we can take up your bill and probably dispose of it. It will probably be about next Tuesday.

Mr. BOUTIN. Excellent.

The CHAIRMAN. In the case of Mr. Horne, I think that we will have a hearing Tuesday. Congressman Pepper will testify, and the National League of Insured Savings Associations, the National Association of Supervisors of State Banks, the Council of Mutual Savings Institutions, and the U.S. Savings & Loan League.

We will have statements submitted by the American Bankers Association and the Independent Bankers Association. Then I imagine, Mr. Horne, we will want you in executive session but I would like to have more members present when we pass on that question to make sure that we just want you. We might want the FDIC and the Federal Reserve under comparable circumstances.

We will pass on that sometime next week. So if it is agreeable with the committee we will excuse Mr. Boutin.

Mr. FINO. Mr. Chairman.

The CHAIRMAN. Mr. Fino.

Mr. FINO. I have a few remarks I would like to direct to Mr. Boutin. The CHAIRMAN. All right, sir.

Mr. FINO. Mr. Boutin, I have been reading in the papers recently of your changed definition of small business whereby a company with less than 5 percent of the industry's sales will be classified as a small business.

Now in my opinion what you have done is nullify the whole intent of the Small Business Act. Under the new definition a concern which in 4 out of the past 6 years has topped \$1 billion in annual sales would be a small business concern.

Under your definition a company with its common stock value of over a quarter of a billion dollars would be a small business concern.

This to me does not make sense. Obviously the loan assistance that the Small Business Administration could render such a concern relatively would be so small as to be meaningless but it does put industrial giants in a preferred position to compete—and I repeat that, to compete—with truly small business concerns with Government set-aside contracts.

With the financial resources such industrial giants obviously are going to get business that should go to truly small business concerns. Mr. Chairman, I realize that this is a little apart from the legislation we are considering here this morning, but I think this development, this new development is so important that our committee formally should request that activation of the new regulations promulgated by Mr. Boutin be postponed at least until our committee can examine in depth this proposed change in the definition of small business.

The CHAIRMAN. The new definition will be put in the record so that we will have an opportunity to see it. I would be reluctant to ask for a postponement of anything until I know more about it than I know right now.

Mr. FINO. Mr. Boutin is here. If what I have said is true then I think we are going way beyond the intent and purpose of the Small Business Act as Congress intended it to be.

The CHAIRMAN. Would you like to comment on what Mr. Fino says?

Mr. BOUTIN. Yes, sir; I would appreciate it, Mr. Chairman.

I would like to point out that first of all this is not an across-the-board or omnibus-type decision. What we have said is that in those few selected industries, and the pilot industries are automotive and tires—and we would go very, very carefully in expanding that—that we are making the definition for procurement set-aside only.

That remains now in the hands of the procuring agencies. We are just giving them a tool where there is such a concentration of industry production that the little fellows, maybe large, in absolute terms, but very small in terms of their share of the market, would have an opportunity to compete.

Then we would consider industry by industry the 5-percent rule which only tells part of the story, because there are other conditions that must be met as well. Large firms that have diversified, for instance, in any of their other production, other products could not have more than 10 percent of the market.

Let us take the single instance of automobiles. There we have the big three and the small two, the small two being American Motors and Checker Co.

If the procuring agency set aside any part of the procurement to these firms they will have an opportunity then to match the best price that the big three will offer the Government. So there is no additional cost to Uncle Sam but a possibility then of fulfilling the mandate of the law as I understand it, that SBA shall take such action through its Administrator as is needed to preserve and enhance competition.

The same thing is true in the tire industry where you have very few firms.

Mr. FINO. Mr. Boutin, what you are saying here is that you want to protect the small fellow as against the big fellow, talking about the automotive industry, the three big compared to the two small but comparing the two small with the small business concerns they are giant organizations, and you are talking about the American Motors Co. which is a multi-million-dollar business.

You are bringing it into this definition of small business?

Mr. BOUTIN. I think the Congressman will agree that they are the smallest we have. We are not discriminating against an automobile manufacturer with 500 employees, let us say, because there is no such animal.

In the tire industry we are bringing in a whole group of manufacturers, some very small and some progressively larger, up to the definition that we have suggested.

I also would like to point out to the Congressman that our promulgation in the Federal Register provides 30 days for comment by anybody, people in the industry, people in private life, people in Government, other Government agencies, who may feel pro or con on this suggestion that we have made.

So it is not set in stone at this point. But in my humble judgment, provided this is carefully administered and not a wide-open program, very carefully selected industries where competition is not being stifled in any way, shape, or manner, and where Government can play an influential role in preserving and enhancing competition, that this is a good thing for our American economy.

Now I am perfectly willing to be shown otherwise. This is my best judgment and I must say I take full responsibility for the decision. This was not a dictated decision by anyone in my organization or out of it. But this is the best opinion of the present Administrator.

The CHAIRMAN. You may put anything in the record that you desire to so that we can look it over in the consideration of Mr. Fino's suggestion which we will take up later.

Mr. BOUTIN. I will be glad to do that, Mr. Chairman.

(The information referred to follows:)

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

[Rev. 6]

SMALL BUSINESS SIZE STANDARDS

Definition of a Small Business Manufacturer

Notice is hereby given that the Administrator of the Small Business Administration proposes to amend the Small Business Size Standards Regulation (Rev. 6), as amended, by establishing new definitions of a small business manufacturer for the purpose of bidding on Government procurements for passenger car and

motorcycle pneumatic tires, truck, and bus pneumatic tires, and passenger automobiles.

The present definition of a small business manufacturing concern for the purpose of bidding on Government procurements for the above products is a concern which is independently owned and operated, is not dominant in the field of operation in which it is bidding and, together with its affiliates, employs no more than 1,000 employees.

Section 2 of the Small Business Act provides for the preservation and expansion of competition and states that the declared policy of Congress is that the Government should aid, counsel, assist and protect, insofar as possible, the interests of small business concerns in order to preserve free competitive enterprise and to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government will be placed with small business enterprises.

In order to increase small business participation in Government procurement, a "Small Business Set-Aside Program" was established. The purpose of the program is to provide the opportunity for qualified small business concerns to compete for a "fair share" of Government contracts without increasing procurement costs.

SBA has the authority and responsibility to determine size standards, which define "small business" for each SIC industry, and to issue a "Certificate of Competency" determining that the firm is competent as to capacity and credit to perform the specific contract. The Government procurement agencies have the final decision as to whether a procurement is to be set-aside.

While administrative practices, rules and criteria have changed somewhat over time, the principal thrust of the program has been to assist small business in obtaining Government contracts, but without necessarily enhancing competition in certain industries. However, by careful and selective revision of size standards for certain industries, considerable impact may be made in carrying out the congressional intent of enhancing competition via Government procurement without increasing procurement costs. The principal needs and greatest potential impacts appear to be in the manufacturing sector of the economy.

Until 10 years ago, the size standard for all firms engaged in manufacturing was set at 500 employees. That is, firms with at most 500 employees were classified as "small business" for Government procurement. It has been recognized by SBA that the definition of small business is dependent on the structure of the particular industry if competition within the industry is to be preserved and strengthened. At the present time, the range of industry size standards for the manufacturing sector runs from 500 to 1,000 employees.

While the need for careful and selective revision of size standards for specific industries has been recognized, current size standards for certain industries are ineffective in preserving or increasing competition through Government procurement. Significant increases in size standards in highly concentrated industries are necessary to enhance competition by firms that may be considered large in absolute size though small in market shares.

For some industries, present size standards do not provide for effective competitive impact through procurement. If significant revision of size standards for these industries were implemented, and important enhancement of effective competition could be realized without increasing procurement costs. Candidate industries include, but are not limited to, those with very few or no firms which can meet present size standards. Firms which are large in absolute size, but small in market shares, can then effectively compete with the giants in highly concentrated industries.

The determination of industries for which size standards are to be revised must, of course, be accomplished in a very careful and judicious manner. There are several factors to be considered. Among these are the competitive structure of the industry, the dollar value and distribution of procurements, the probable effects of competition on smaller firms, if they exist, in addition to effects on the very large firms, the utilization of capacity in the industry to determine probable price versus output adjustments, etc.

The automotive tire industry is highly concentrated. This pertains to the two industry product classes, Passenger Car and Motorcycle Pneumatic Tires (SIC 30111) and Truck and Bus (and off-the-road) Pneumatic Tires (SIC 30112). In 1958, the four leaders accounted for 74 percent of value of product shipped and the eight leaders accounted for 88 percent of value of product shipped.

By 1965, only 14 domestic firms produced automotive tires. This is to be contrasted with 23 companies in 1945. The degree of concentration has been increasing due to vertical acquisitions of distribution outlets. There are no significant barriers to competition with reference to production technology. Optimum plant size is estimated to be 5,000-10,000 tire casings per day. A plant producing 10,000 tires per day will account for approximately 2 percent of current tire production. Hence, a firm which may account for a very small portion of the market would be of sufficient size to produce efficiently.

The degree of concentration in the passenger car industry (SIC 37171) is extremely high. In 1958, the four largest companies accounted for 99 percent of the value of shipments. While there are four major firms, only three may be considered as dominant in the industry. During the first 7 months of calendar year 1966, the three largest firms accounted for approximately 97 percent of sales. At the same time, the fourth firm can likely be competitive with respect to capacity and price for Government procurement. Provided that size standards are revised accordingly, the operation of the partial set-aside can provide the needed opportunity for such competition. Of course, other firms with very tiny market shares may be in a position to benefit as well, provided that they can meet the output and price conditions.

While these industries differ in degree, the three industries are highly concentrated. Also, the volume of Government procurement for products produced by these industries is substantial. If these size standards are revised and an effective set-aside program is pursued there is every reason to expect that competition will be effectively increased with no increase in procurement prices.

For these reasons, SBA finds that in order to carry out the intent and purpose of section 2 of the Small Business Act it is necessary to amend the present definition of a small business manufacturer of passenger car and motorcycle pneumatic tires, truck and bus and off-the-road pneumatic tires and passenger automobiles for Government procurement purposes. Therefore, it is proposed to establish a new definition of a small business manufacturing these products as follows: Any concern which is independently owned and operated, not dominant in its field of operation in which it is bidding and, together with its affiliates, produces less than 5 percent of the total shipments of the passenger car and motorcycle pneumatic tires or truck and bus and off-the-road pneumatic tires, or passenger automobiles.

In addition, any manufacturer in order to qualify as a small business for Government procurement assistance must have produced less than 10 percent of the total value of the products produced during the preceding calendar year in that field of operation in which it is primarily engaged.

Interested persons may file with the Deputy Administrator for Procurement and Management Assistance within thirty (30) days after the publication of this proposal, written statements of facts, opinions, or arguments concerning the appropriate definition of a small business for Government procurement of passenger car and motorcycle pneumatic tires or trucks and bus and off-the-road pneumatic tires and passenger automobiles.

All correspondence on this matter should be addressed to:

Deputy Administrator for Procurement and Management Assistance, Small Business Administration, 811 Vermont Avenue NW., Washington, D.C. 20416, Attention: Size Standards Staff.

It is proposed to change the definition of a small business manufacturing concern for the purpose of bidding on Government procurements of pneumatic tires within Census Classification Codes 30111 and 30112 and passenger automobiles within Census Classification Code 37171, as follows:

The Small Business Size Standards Regulation (Rev. 6) (31 F.R. 9721), as amended (31 F.R. 10114, -----), is hereby further amended by:

1. Adding to Schedule B of the product classes and size standards as follows:

Census classification code	Industry	Employment size standard
30111	Passenger cars and motorcycle pneumatic tires (casings)	See footnote 6.
30112	Trucks and bus (and off-the-road) pneumatic tires	See footnote 6.
37171	Passenger cars (knocked down or assembled)	See footnote 6.

* The size standards for SIC 30111, 30112, and 37171 are set forth in sections 121.3-8(b)(5) and 121.3-8(b)(6) respectively of this part.

2. Revising paragraph (b) of § 121.3-8 to read as follows:

§ 121.3-8 Definition of small business for Government procurement.

* * * * *

(b) *Manufacturing.* Any concern bidding on a contract for a product it manufactured is classified:

(1) As small if it is bidding on a contract for a product classified within an industry not set forth in Schedule B of this part and its number of employees does not exceed 500 persons.

(2) As small if it is bidding on a contract for food canning and preserving and its number of employees does not exceed 500 persons, exclusive of agricultural labor as defined in section (k) of the Federal Unemployment Tax Act, 68A Stat. 454, 26 U.S.C. (I.R.C. 1954) 3306.

(3) As small if it is bidding on a contract for petroleum, other than lubricants and miscellaneous petroleum products, and its number of employees does not exceed 1,000 persons and it does not have more than 30,000 barrels-per-day crude-oil capacity from owned or leased facilities.

(4) As small if it is bidding on a contract for a product classified within an industry set forth in Schedule B of this part and its number of employees does not exceed the size standard established for that industry.

(5) As small if it is bidding on a contract for pneumatic tires within Census Classification Codes 30111 and 30112: *Provided*, That (i) the value of the pneumatic tires within Census Classification Codes 30111 and 30112, which it manufactured or otherwise produced during the preceding calendar year was less than 5 percent of the total value of such tires manufactured or otherwise produced in the United States during said period, and (ii) the value of the principal product or those products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10 percent of the total value of such product or those products manufactured or otherwise produced or sold in the United States during said period.

(6) As small if it is bidding on a contract for passenger cars within Census Classification Code 37171: *Provided*, That (i) the value of the passenger cars within Census Classification Code 37171, which it manufactured or otherwise produced during the preceding calendar year was less than 5 percent of the total value of such cars manufactured or otherwise produced in the United States during said period, and (ii) the value of the principal product or those products which it manufactured or otherwise produced or sold during the preceding calendar year is less than 10 percent of the total value of that product or those products manufactured or otherwise produced or sold in the United States during said period.

Dated: September 6, 1966.

BERNARD L. BOUTIN, *Administrator*.

[F.R. Doc. 66-9965; Filed, Sept. 13, 1966; 8:45 a.m.]

The CHAIRMAN. I am greatly concerned about the future of small business. I want to get your views on it. You take for instance the high interest that is being paid now as between the big man and the little man. The little man is certainly at a great disadvantage. The big man, big business, gets his money at 6 or 7 percent. Well, the effective rate of course is one-half that taxwise.

It does not help the little man much because he is not in that kind of income tax bracket.

Next is that in getting money to run a business the big concerns can go public and sell bonds or stocks or anything that they desire to sell and get their money which to them is in effect at no cost except they expect to pay dividends from it of course.

The little man does not do that. He does not have that standing that permits him to go public. If he does the expense is so great it is not looked upon as a favorable way to attract funds.

Next is the fact that retained earnings of large concerns are tremendous. They go up in the tens of billions of dollars. Last year it was about \$56 billion. That is costless capital, it costs them nothing because the customers pay it.

The little man does not have anything like that so he is at a great disadvantage. In view of those disadvantages it looks to me like the small businessman is facing the hardest future that he has had in a long, long time.

I have been watching this thing a long time. You take, for instance, in most of the States, at least the last count I had, 33 States, the usury laws do not protect the corporation at all. In some States an individual can go in and get a loan and of course lenders cannot charge more than the rate allowed by statute.

But it is easy for them to say to him, "now we have our lawyer in the back room and we can incorporate you in about 15 minutes and as a corporation we can do business because we can charge you a rate of interest that will be meaningful to us," and much higher, of course, sometimes two or three times the legal rate.

Too much of that is going on if the reports I get are true. It looks to me like the ability of big business to squeeze out these little people has increased considerably during the last few years. Considering this from the standpoint of concentration, Mr. Boutin, the dangers from concentration and this bind that they are in and also their inability to get proper financing, I want you to comment on this and also whether or not you believe that the public service institutions like banks and others that get their support from the Federal Government really should have some obligation to consider loans to individuals and small businesses.

For instance, if a person goes into a bank representing himself or his concern and they just say, "No, we don't like the color of your eyes, your hair, we won't do business with you, we don't want to have a thing to do with you," and don't even consider it as a helpful program that will aid the community or the Nation, it is then turned down flat. As it is now there is no recourse for that person—none.

He just has to leave.

If he goes to another bank the bank will say, "One bank has turned you down. We don't do business that way. You have been turned down once, we will have to also."

Those things I wish you would comment on, monopoly and the inability to get credit, these points that I have brought up.

Mr. BOUTIN. I will be glad to, Mr. Chairman. There is no question at all there is great validity in your statement that the tight money and high interest rates work a progressively greater hardship on the small businessman.

He has fewer opportunities to find other methods of financing his business. It has a great impact on his profit capability and on his opportunity to stay in business. I talked with a small businessman this morning from the west coast who came in my office literally in tears, Mr. Chairman, who has been very successful, he is doing over a half million dollars worth of business a year. He has done business with the same bank for many years. That bank simply called him in and said, "Mister, you have 90 days to find yourself a new source of money because we are calling our loans. We have larger borrowers, larger accounts, that we have to take care of."

That man, unless we can find a way in SBA to help him, is going to be out of business. No help for him.

I was in upstate New York yesterday. I visited a firm there which has had a remarkable growth record, a small business concern doing

a lot of work in research and development as well as manufacturing new products.

The president of that firm told me that the only means of survival that he sees under the current money market is one of merger with a major corporation. That deals with your second point.

I think this is a lot more general than is readily apparent or realized right now. Many of these people who need capital and who cannot get it from their banks and they are unable to get it from the stock market are just going to have to look to mergers with other concerns that have a lot of money and a lot of leverage in the marketplace of money lending, banks and so forth.

They are just going to have a hard time and are going to look to other avenues unless we can find some relief.

Also, in terms of small business and the small businessman, while we have seen remarkable growth in the last 5 years and an increase in the number of small businesses——

The CHAIRMAN. Aren't most of them service industries?

Mr. BOUTIN. A great many of them are manufacturing, Mr. Chairman, which is a very surprising fact that we have discovered. More and more are going into the research and development field as an example. These concerns have doubled their profits from what they were in 1961.

Unless some relief is found in terms of money availability to meet growth demands, to meet their payroll, to finance their accounts receivable, to get new machinery so that they are abreast of modern techniques and requirements, many of these concerns that we have such great hopes for now and are so important to our economy and our free enterprise system are just not going to be able to survive.

So that I think that the Small Business Administration's programs are more in demand now than they ever have been. We are depended upon for help by more businessmen than ever before.

Now one of the things we are doing, we have a pilot program right now with the Bank of America whereby we are guaranteeing loans that they make. They do the evaluations, they do the processing, and they come to us with a very simplified form. They have entered into this voluntarily. We have great hopes that it is going to work where with our guarantee they are going to help a lot of these small businesses that right now don't meet the lending criteria of the bank.

We hope to broaden it but it is going to take the cooperation of the banks.

The CHAIRMAN. You are guaranteeing them 100 percent?

Mr. BOUTIN. Ninety percent, Mr. Chairman, up to \$350,000.

The CHAIRMAN. Each?

Mr. BOUTIN. Each.

The CHAIRMAN. Is that taken out of your budget?

Mr. BOUTIN. We put aside 10 percent of the amount of the guarantee as a reserve, which conserves our funds and it means that we have that much more money to go——

The CHAIRMAN. The man who came to your office in tears, why can't you help him?

Mr. BOUTIN. We are trying to. I arranged for him to meet with our loan people before I left for this hearing this morning, Mr. Chairman. I think we are going to be able to do something for him.

The CHAIRMAN. Don't you think that when you run into good deserving cases like that all over the Nation where you are unable to help them that you should make some report to the Speaker of the House or the President of the Senate or the committees of Congress about these cases?

Mr. BOUTIN. We of course have a great many, as the chairman knows—

The CHAIRMAN. Well, the Banking and Currency Committees of the House and Senate would be the logical ones I think because we handle most of your legislation. Don't you think that is a reasonable request because that would keep us alerted as to the needs?

As I interpret the statement being made you are being asked to get tighter and tighter and make fewer and fewer and smaller and smaller loans. Am I correct in that?

Mr. BOUTIN. No, I think the real fact, Mr. Chairman, is that we are being asked to make better and better loans, in other words, not so many soft loans.

The CHAIRMAN. Your record has been good so far as quality of the loans.

Mr. ASHLEY. I was curious, Mr. Boutin, as to the interest rate that you charge under the Bank of America guarantee program you referred to?

Mr. BOUTIN. It would be a varying interest rate, Congressman. Of course we have a limitation that a bank can charge of 8 percent, with a half percent coming to SBA in guarantee fee.

However, they are not running anything like 8 percent but they are not at prime either. Six and a half or 7 percent would be probably as good—

Mr. ASHLEY. Saying they are not as good as prime, inasmuch as there you have that kind of guarantee against the loan how could they be better secured than the full faith and credit of the United States?

Mr. BOUTIN. I don't dispute that they are very, very well secured loans with an SBA guarantee which is in fact a guarantee of the United States.

But prime money is an awfully scarce commodity now. It is scarcer than money, itself. I am just giving the Congressman my best opinion. Six and a half or 7 percent would be my judgment.

Mr. ASHLEY. What percent of the SBIC's activities are loan transactions and as against participation?

Mr. BOUTIN. It is almost running exactly at 50 percent, long-term loans versus equity type financing.

Mr. ASHLEY. Do you look into those closely? It seems to me that this kind of transaction lends itself to a leverage position so far as the SBIC is concerned.

Mr. BOUTIN. As I testified earlier, Congressman, we have not in the past as much as I think we should have, but we are now.

We are taking a look at every single one of the SBIC's with our annual inspections. The two reports that must be submitted to SBA each year, one at the end of September, one at the end of March, one audited by a public accountant. Also we have the portfolio evaluation report that comes to us in June.

So we have now four vehicles. We have a good chance to make sure that these SBIC's are operating properly.

Mr. ASHLEY. Finally, you mentioned with respect to the automotive industry, the big three and the small two, the small two being American Motors and the Checker Co.

What about Kaiser Jeep Co.?

Mr. BOUTIN. Of course, in certain types of vehicles International Harvester is producing, too. I was thinking in terms of private passenger vehicles, mostly thinking in terms of the other two.

There would be no restriction there. If they come within the definition of 5 percent, fine.

Mr. ASHLEY. Mr. Horne, this final question to you if I may. Does the Home Loan Bank Board allow savings and loans to accept share deposits in excess of \$10,000 limit?

Does it allow this?

Mr. SCOTT. Yes. There is no general authority to so restrict it.

Mr. HORNE. We do this sometimes. This happens occasionally, Congressman; as the general counsel has pointed out, there is no authority to restrict them per se.

Mr. ASHLEY. Could there be authority? Is it fair to deposit or if there is a problem area that he is not aware about?

Mr. HORNE. I was going to point out that once it reaches a certain stage where it is pretty much under our jurisdiction, we can say and we have said in two or three cases in recent years that a particular association cannot take in accounts in excess of \$10,000.

Mr. ASHLEY. Then you do have authority apparently?

Mr. HORNE. After it reaches practically a disappearing stage.

Mr. SCOTT. It is this situation, Congressman Ashley. If the Insurance Corporation is called upon to render some form of assistance to the association, for example, by a loan or contribution or whatever, then of course we are in a position to enter into an agreement and as part of that agreement to obtain certain commitments as to the actions of the association.

We don't have authority as such just to promulgate a rule affecting all institutions, that they shall not take in more than a certain amount from any one source or account holder.

Mr. ASHLEY. Would such authority be useful, bearing in mind of course the various stages of development of problems that you are confronted with with respect to various institutions?

Mr. HORNE. I can see I believe where such authority might be useful.

Mr. SCOTT. We do reach a point in these situations where what you are referring to is a matter of concern to us, yes.

Mr. ASHLEY. This is not a matter that falls within the purview of the legislation. It seems to me it might be well, when it is convenient for you to do so, to address yourself to this inquiry and perhaps direct a letter to the chairman so that your views will be a matter of record for the committee.

Mr. SCOTT. I shall be glad to do so.

Mr. ASHLEY. Thank you very much.

I—may I say again—I appreciate the testimony of both these gentlemen, Mr. Chairman. They are both doing an outstanding job.

The CHAIRMAN. I share your views. I think they are too. Mr. Clawson.

Mr. CLAWSON. Thank you, Mr. Chairman.

In connection with the discussion on high interest rates, I would like to ask Mr. Horne to make an observation of the competitive

position of the Government in the money market as a result of the most recent announcement of home loan banks to issue \$650 million at 6.25 percent to yield 6.2.

Mr. HORNE. I don't know that there is much enlightenment I can give to the Congressman or other members of the committee on that score. We all know that even though there is more money available today than there ever has been, there is also much greater demand for it than there has ever been.

This has produced quite a few stringencies. At this particular point we have a \$500 million rollover coming due and we have gone to the market to obtain funds to meet that.

Mr. CLAWSON. One year I understand?

Mr. HORNE. Actually in this case when we announced the \$650 million, \$400 million would come from the market and \$250 million from the Treasury trust funds.

This could conceivably, as one newspaper pointed out this morning, mean that some other Government agency might go into the market for a hundred million dollars more than anticipated.

The important thing so far as we are concerned is that the Treasury recognizes our situation and they were prepared to make up any difference between what we should go to the market for and what our needs might be.

But as you correctly pointed out, if we go to the market, we do have to pay this price for it. As a matter of fact, it is better with the yield of 6.20 than we thought it would be when we felt the pulse of the market on Friday and Monday and Tuesday.

We thought that we would have to stick with the 6.25 at least, but we were able to do a little bit better.

Mr. CLAWSON. With the permission of the chairman, would you be willing to submit a list of the Treasury trust funds that took up the \$250 million on this?

Mr. HORNE. I will take this up with the U.S. Treasury.

The CHAIRMAN. I think you should make your request to the Secretary of the Treasury. If you want to I will submit the request.

Mr. CLAWSON. Will you do that, Mr. Chairman?

(The information referred to may be found on p. 266.)

The CHAIRMAN. Yes. May I suggest that the Participation Sales Act has been very much abused. A lot of people are for it, a lot of people are against it. But when I was first consulted about this proposal by the Bureau of the Budget and the Treasury and others in the conference that we had, the first thing I said was that we must make arrangements to use these trust accounts, and named several of them.

I had the amounts there. It did not strike them too well at that point. You will recall the Joint Economic Committee's report this year recommended the use of trust accounts, and being chairman of that committee I have kept up with this and I think it is a wonderful thing.

If for no other reason the Participation Sales Act is worth a lot to this country because it gives the President for the first time the authority and the power, to use these trust accounts, and they were used in the issue that you have just mentioned for the first time. Is that right?

Mr. HORNE. The first time for us as I recall, sir.

The CHAIRMAN. It is the first time generally since the Participation Sales Act. Anyway, that act is the first one that implemented the use of these trust accounts, I think it will be a wonderful thing not only to the general economy to have more money and credit available but also to the Government trust accounts.

They are entitled to reasonable interest from the fund.

Mr. HORNE. If you will forgive me for saying so, Mr. Chairman, this is just another example of several instances in which your leadership has been shown to be wise.

The CHAIRMAN. I was not fishing for a compliment. I appreciate that. Without objection we stand in recess until 10 o'clock Tuesday morning and you gentlemen have permission to elaborate on your statements if you desire, to make the points you would like to make.

Mr. BOUTIN. Thank you, sir.

Mr. HORNE. Thank you, Mr. Chairman, and members of the committee.

The CHAIRMAN. Thank you, gentlemen.

(The following information was submitted for the record:)

FEDERAL HOME LOAN BANK BOARD,
Washington, D.C., May 25, 1966.

HON. WRIGHT PATMAN,
Chairman of the Banking and Currency Committee, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Federal Home Loan Bank Board is pleased to submit its views on possible amendment of the Savings and Loan Holding Company Act to permit a savings and loan holding company's subsidiary association to participate in a supervisory merger with a failing institution.

The act providing for the regulation of savings and loan holding companies, enacted as Public Law 86-374 on September 23, 1959, amended the National Housing Act by adding a new section 408 thereto which, among other things, prohibits savings and loan holding companies from acquiring the control of any other insured savings and loan institution. Thus, subsection (c) of said section 408 (12 U.S.C. 1730a. (c)) provides that:

"(c) It shall be unlawful for any company on or after September 23, 1959—

"(1) to acquire the control of more than one insured institution; or

"(2) to acquire the control of an insured institution when it holds the control of any other insured institution."

In the light of a 1960 opinion by its General Counsel, the Federal Home Loan Bank Board has uniformly construed said section 408(c) as prohibiting further holding company acquisitions by any methods, whether by purchase of capital stock or by merger or purchase of all or substantially all of the assets of another insured institution.

Current developments in the savings and loan field have demonstrated, in the Board's view, the desirability of statutory authority permitting such acquisitions by way of merger or purchase of assets in a limited number of situations where such action is deemed necessary by the Federal Savings and Loan Insurance Corporation in order to prevent a default in the merging institution.

Accordingly, I am submitting for consideration by your committee, in connection with its study of H.R. 14159, the Financial Institutions Supervisory Act of 1966, a draft of such an amendment to said section 408(c), which would create a limited exception for supervisory mergers or purchases of assets which have been given prior approval by the Board in order to prevent a default in the institution being acquired. If viewed favorably by the committee, the Board would recommend the amendment be added as section 103 of title I of H.R. 14159.

I am advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report. I would like to request that this letter be printed as part of the record of the hearings, when held by the committee, on H.R. 14159.

With kind personal regards, I am

Sincerely,

JOHN HORNE, *Chairman.*

SUGGESTED AMENDMENT TO H.R. 14159

SEC. 103. Subsection (c) of section 408 of the National Housing Act, as amended (12 U.S.C. 1730a.(c)), is hereby amended to read as follows:

"(c) It shall be unlawful for any company on or after September 23, 1959—

"(1) to acquire the control of more than one insured institution, or

"(2) to acquire the control of an insured institution when it holds the control of any other insured institution, except in a transaction which has been approved by the Board in order to prevent a default in the insured institution the stock or assets of which are being acquired."

FEDERAL HOME LOAN BANK BOARD,
Washington, D.C., September 19, 1966.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
House of Representatives.

DEAR MR. CHAIRMAN: At the request of Congressman Hanna, I am attaching hereto a draft of alternative language for amendment of subsection (c) of section 408 of the National Housing Act (the savings and loan holding-company section) to permit a savings and loan holding company's subsidiary insured association to participate in a supervisory merger or similar transaction with a failing insured association.

This draft is alternative to the draft which I transmitted to you with my letter of May 25, 1966, relating to possible amendment of the House version (H.R. 14159) of the proposed supervisory legislation. It is intended to accomplish the same purpose as the previous draft but avoids reference to "default".

If asked whether the attached draft would be acceptable to the Federal Home Loan Bank Board for inclusion in S. 3158, my answer would be in the affirmative.

With kindest regards, I am

Sincerely,

JOHN E. HORNE.

SUGGESTED AMENDMENT TO S. 3158

SEC. 103. Subsection (c) of section 408 of the National Housing Act, as amended (12 U.S.C. 1730a.(c)), is hereby amended to read as follows:

"(c) It shall be unlawful for any company on or after September 23, 1959—

"(1) to acquire the control of more than one insured institution, or

"(2) to acquire the control of an insured institution when it holds the control of any other insured institution, except in a transaction which has been approved by the Federal Home Loan Bank Board upon a determination by it that such transaction is advisable to assist in preventing the commencement or continuance of involuntary liquidation of the insured institutions whose control, whether by acquisition of stock or assets or otherwise, is being acquired by such company or an insured institution which it controls."

GREATER WASHINGTON INDUSTRIAL INVESTMENTS, INC.,
Washington, D.C., September 14, 1966.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: It is my understanding that your committee will shortly consider H.R. 16934, the companion bill to S. 3695 which was recently passed by the Senate. While we at Greater Washington Industrial Investments, Inc. support the spirit of that bill, we would like to call your attention to one provision which imposes an unjustified hardship on public SBIC's and their officers, directors and principal shareholders. I refer to section 9 which would amend chapter 17 of title 18 of the United States Code to impose a criminal penalty for the use of SBIC stock as collateral for loans to purchase stock in an SBIC.

Apparently, this section was added as a result of the hearings held by the Senate Permanent Subcommittee on Investigations to prevent the so-called "bootstrapping" of an SBIC. This refers to a procedure whereby the statutory capital of an SBIC did not in fact represent the shareholders' own funds but was obtained through loans which were secured by their SBIC shares and which were often repaid by a diversion of the SBIC's assets. We at Greater Washington concur fully that such practices must be eliminated; however, the proposed bill goes far beyond that and also prevents the use of SBIC shares as collateral w

the loans are used to purchase stock on the open market. Since such purchases have no effect whatever on the SBIC's statutory capital, the application of this section to open market purchases does not serve the Government's interest and, in fact, is contrary to it.

Passage of section 9 in its present form will injure the SBIC program by significantly limiting the opportunity for SBIC managers to invest in their own companies. Operating an SBIC successfully is a difficult business and requires particularly able executives. The competition for such people is intense, and SBIC's are often at a serious competitive disadvantage in the salaries that they can pay and, as registrants under the Investment Company Act of 1940, in being prohibited from granting stock options. One of the few incentives that exists is the availability of presently undervalued stock in the over-the-counter market. (For the past 4 years, most public SBIC shares have traded at discounts of 50 percent or more from their underlying net asset values.) To dedicated SBIC executives with confidence in the ultimate future of the program, stock ownership offers a significant personal incentive as well as a tangible expression of their confidence. For the many executives with limited financial resources, however, this often requires that they borrow against their shares.

The proposed provision not only prevents legitimate purchases on credit, but it also introduces uncertainty in any situation where an SBIC executive has pledged his shares for a nonpurpose loan. Because of the difficulty in conclusively proving the exact use of the proceeds of a revolving nonpurpose loan, it would appear that once an SBIC executive's shares were pledged under such a loan, he would be risking possible criminal prosecution if he were to buy additional shares, even if apparently with other funds. I respectfully submit that this is not Congress' intention, and therefore section 9 should be amended to exclude purchases in a public market.

If you have any questions or if you would care to have me expand this statement, either personally or in writing, I would be happy to do so.

Yours very truly,

DON A. CHRISTENSEN, *President*.

[Telegram]

WASHINGTON, D.C., *September 16, 1966.*

HON. WRIGHT PATMAN,
House of Representatives,
Room 2328, Rayburn Building, Washington, D.C.:

Reference my letter of September 14 to the House Banking and Currency Committee, we strongly recommend that if open market purchases cannot be exempted from section 9 of S. 3695, the section should at least be amended to permit such pledging of SBIC shares when prior approval of the Small Business Administrator has been obtained.

GREATER WASHINGTON INDUSTRIAL INVESTMENT, INC.
(A Federal Licensee Under the Small Business Investment Act),
DON A. CHRISTENSEN, *President*.

[Telegram]

BRIDGEPORT, CONN., *September 16, 1966.*

Re House bill S. 3695.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.:

In reference to the above bill regarding previous borrowing and pledging of SBIC stock we urge committee amendment to permit such pledges with SBA approval.

FIRST CONNECTICUT SMALL BUSINESS INVESTMENT CO.
JAMES M. BREINER, *Chairman of the Board,*
DAVID ENGGSON, *President*.

(Whereupon, at 12:05 p.m., the committee adjourned, to reconvene at 10 a.m., Tuesday, September 20, 1966.)

(The Committee on Banking and Currency, in executive session, ordered H.R. 18021 reported to the House, without amendment, on September 28, 1966. The bill, H.R. 18021, follows:)

1 by an Associate Administrator who shall be appointed by the
2 Administrator, and shall receive compensation at the rate
3 provided by law for other Associate Administrators of the
4 Small Business Administration.”

5 SEC. 3. Section 308 of the Small Business Investment
6 Act of 1958 is amended—

7 (1) by striking out the last two sentences of sub-
8 section (c) ; and

9 (2) by inserting after subsection (e) the following
10 new subsections:

11 “(f) In the performance of, and with respect to the
12 functions, powers, and duties vested by this Act, the Ad-
13 ministrator and the Administration shall (in addition to
14 any authority otherwise vested by this Act) have the func-
15 tions, powers, and duties set forth in the Small Business
16 Act, and the provisions of sections 13 and 16 of that Act,
17 insofar as applicable, are extended to the functions of the
18 Administrator and the Administration under this Act.

19 “(g) The Administration shall include in its annual
20 report, made pursuant to section 10 (a) of the Small Business
21 Act, a full and detailed account of its operations under this
22 Act. Such report shall set forth the amount of losses sus-
23 tained by the Government as a result of such operations
the preceding fiscal year, together with an estimate
total losses which the Government can reasonably ex-

3

1 pect to incur as a result of such operations during the then
2 current fiscal year.”

3 SEC. 4. (a) Section 309 of the Small Business Invest-
4 ment Act of 1958 is amended by striking out the section
5 heading and inserting in lieu thereof the following:

6 “REVOCATION AND SUSPENSION OF LICENSES; CEASE AND
7 DESIST ORDERS”.

8 (b) Section 309 (a) of such Act is amended—

9 (1) by inserting “revoked or” before “suspended”;

10 (2) by striking out in paragraph (1) “Adminis-
11 tration, for the purpose of obtaining the license” and
12 inserting in lieu thereof “Administration”; and

13 (3) by striking out in paragraph (2) “for the pur-
14 pose of obtaining the license.”.

15 (c) Section 309 (b) of such Act is amended to read
16 as follows:

17 “(b) Where a licensee or any other person has not
18 complied with any provision of this Act, or of any regula-
19 tion issued pursuant thereto by the Administration, or is
20 engaging or is about to engage in any acts or practices
21 which constitute or will constitute a violation of such Act
22 or regulation, the Administration may order such licensee
23 or other person to cease and desist from such action or failure
24 to act. The Administration may further order such licensee
25 or other person to take such action or to refrain from such

1 action as the Administration deems necessary to insure
2 compliance with the Act and the regulations. The Admin-
3 istration may also suspend the license of a licensee, against
4 whom an order has been issued, until such licensee complies
5 with such order.”

6 (d) Section 309 (c) of such Act is amended—

7 (1) by inserting after “licensee”, the first place
8 it appears, the following: “and any other person”;

9 (2) by striking out “inform the licensee” and in-
10 serting in lieu thereof the following: “set forth”;

11 (3) by inserting after “licensee”, the last place
12 it appears, the following: “and any other person in-
13 volved”; and

14 (4) by inserting before “suspending”, each place
15 it appears, the following: “revoking or”.

16 (e) Section 309 (c) of such Act is amended by insert-
17 ing after “licensee”, the first place it appears, the following:
18 “, or other person against whom an order is issued.”.

19 (f) Section 309 (f) of such Act is amended—

20 (1) by striking out the first sentence and inserting
21 in lieu thereof the following: “If any licensee or other
22 person against which or against whom an order is issued
23 under this section fails to obey the order, the Admin-
24 istration may apply to the United States court of ap-
25 peals, within the circuit where the licensee has its prin-

5

1 cipal place of business, for the enforcement of the order,
2 and shall file a transcript of the record upon which the
3 order complained of was entered.”; and

4 (2) by inserting “or other person” before the period
5 at the end of the second sentence.

6 SEC. 5. Section 310 of the Small Business Investment
7 Act of 1958 is amended—

8 (1) by striking out the section heading and insert-
9 ing in lieu thereof “EXAMINATIONS AND INVESTIGA-
10 TIONS”; and

11 (2) by inserting “(a)” after “SEC. 310.”, and by
12 adding at the end thereof a new subsection as follows:

13 “(b) Each small business investment company shall be
14 subject to examinations made by direction of the Administra-
15 tion by examiners selected or approved by the Administra-
16 tion, and the cost of such examinations, including the com-
17 pensation of the examiners, may in the discretion of the
18 Administration be assessed against the company examined
19 and when so assessed shall be paid by such company. Every
20 such company shall make such reports to the Administration
21 at such times and in such form as the Administration may
22 require; except that the Administration is authorized to
23 exempt from making such reports any such company which
24 is registered under the Investment Company Act of 1940

1 to the extent necessary to avoid duplication in reporting
2 requirements.”

3 SEC. 6. Section 311 of the Small Business Investment
4 Act of 1958 is amended by adding at the end thereof the
5 following new subsection:

6 “(c) The Administration shall have authority to act
7 as trustee or receiver of the licensee. Upon request by the
8 Administration, the court may appoint the Administration
9 to act in such capacity unless the court deems such appoint-
10 ment inequitable or otherwise inappropriate by reason of
11 the special circumstances involved.”

12 SEC. 7. Title III of the Small Business Investment Act
13 of 1958 is further amended by adding at the end thereof the
14 following new sections:

15 “REMOVAL OR SUSPENSION OF DIRECTORS AND OFFICERS
16 OF LICENSEES

17 “SEC. 313. (a) The Administration may serve upon
18 any director or officer of a licensee a written notice of its
19 intention to remove him from office whenever, in the opinion
20 of the Administration, such director or officer—

21 “(1) has willfully and knowingly committed any
22 substantial violation of—

23 “(A) this Act,

24 “(B) any regulation issued under this Act, or

1 “(C) a cease-and-desist order which has be-
2 come final, or

3 “(2) has willfully and knowingly committed or
4 engaged in any act, omission, or practice which con-
5 stitutes a substantial breach of his fiduciary duty as such
6 director or officer,

7 and that such violation or such breach of fiduciary duty is
8 one involving personal dishonesty on the part of such direc-
9 tor or officer.

10 “(b) In respect to any director or officer referred to
11 in subsection (a), the Administration may, if it deems it
12 necessary for the protection of the licensee or the interests
13 of the Administration, by written notice to such effect served
14 upon such director or officer, suspend him from office and/or
15 prohibit him from further participation in any manner in
16 the conduct of the affairs of the licensee. Such suspension
17 and/or prohibition shall become effective upon service of
18 such notice and, unless stayed by a court in proceedings
19 authorized by subsection (d), shall remain in effect pend-
20 ing the completion of the administrative proceedings pur-
21 suant to the notice served under subsection (a) and until
22 such time as the Administration shall dismiss the charges
23 specified in such notice, or, if an order of removal and/or
24 prohibition is issued against the director or officer, until the

1 effective date of any such order. Copies of any such notice
2 shall also be served upon the interested licensee.

3 “(c) A notice of intention to remove a director or offi-
4 cer, as provided in subsection (a), shall contain a statement
5 of the facts constituting grounds therefor, and shall fix a time
6 and place at which a hearing will be held thereon. Such
7 hearing shall be fixed for a date not earlier than thirty days
8 nor later than sixty days after the date of service of such
9 notice, unless an earlier or a later date is set by the Ad-
10 ministration at the request of (1) such director or officer
11 and for good cause shown, or (2) the Attorney General
12 of the United States. Unless such director or officer shall
13 appear at the hearing in person or by a duly authorized rep-
14 resentative, he shall be deemed to have consented to the
15 issuance of an order of such removal. In the event of such
16 consent, or if upon the record made at any such hearing the
17 Administration shall find that any of the grounds specified in
18 such notice has been established, the Administration may
19 issue such orders of removal from office as it deems appro-
20 priate. Any such order shall become effective at the expira-
21 tion of thirty days after service upon such licensee and the
22 director or officer concerned (except in the case of an order
23 issued upon consent, which shall become effective at the time
24 specified therein). Such order shall remain effective and
25 enforceable except to such extent as it is stayed, modified, ter-

1 minated, or set aside by action of the Administration or a
2 reviewing court.

3 “(d) Within ten days after any director or officer has
4 been suspended from office and/or prohibited from par-
5 ticipation in the conduct of the affairs of a licensee under
6 subsection (b), such director or officer may apply to the
7 United States district court for the judicial district in which
8 the home office of the licensee is located, or the United
9 States District Court for the District of Columbia, for a
10 stay of such suspension and/or prohibition pending the
11 completion of the administrative proceedings pursuant to the
12 notice served upon such director or officer under subsection
13 (a), and such court shall have jurisdiction to stay such
14 suspension and/or prohibition.

15 “(e) Whenever any director or officer of a licensee
16 is charged in any information, indictment, or complaint
17 authorized by a United States attorney, with the commis-
18 sion of or participation in a felony involving dishonesty or
19 breach of trust, the Administration may, by written notice
20 served upon such director or officer, suspend him from office
21 and/or prohibit him from further participation in any man-
22 ner in the conduct of the affairs of the licensee. A copy
23 of such notice shall also be served upon the licensee. Such
24 suspension and/or prohibition shall remain in effect until

1 such information, indictment, or complaint is finally dis-
2 posed of or until terminated by the Administration. In the
3 event that a judgment of conviction with respect to such
4 offense is entered against such director or officer, and at such
5 time as such judgment is not subject to further appellate
6 review, the Administration may issue and serve upon such
7 director or officer an order removing him from office. A
8 copy of such order shall be served upon such licensee, where-
9 upon such director or officer shall cease to be a director or
10 officer of such licensee. A finding of not guilty or other dis-
11 position of the charge shall not preclude the Administration
12 from thereafter instituting proceedings to suspend or remove
13 such director or officer from office and/or to prohibit him
14 from further participation in licensee affairs, pursuant to
15 subsection (a) or (b).

16 “(f) (1) Any hearing provided for in this section shall
17 be held in the Federal judicial district or in the territory in
18 which the principal office of the licensee is located unless
19 the party afforded the hearing consents to another place, and
20 shall be conducted in accordance with the provisions of chap-
21 ter 7 of title 5 of the United States Code. After such hear-
22 ing, and within ninety days after the Administration has noti-
23 fied the parties that the case has been submitted to it for final
24 decision, the Administration shall render its decision (which
25 shall include findings of fact upon which its decision is

11.

1 predicated) and shall issue and cause to be served upon
2 each party to the proceeding an order or orders consistent
3 with the provisions of this section. Judicial review of any
4 such order shall be exclusively as provided in this sub-
5 section. Unless a petition for review is timely filed in a
6 court of appeals of the United States, as hereinafter pro-
7 vided in paragraph (2) of this subsection, and thereafter
8 until the record in the proceeding has been filed as so pro-
9 vided, the Administration may at any time, upon such notice
10 and in such manner as it shall deem proper, modify, termi-
11 nate, or set aside any such order. Upon such filing of the
12 record, the Administration may modify, terminate, or set
13 aside any such order with permission of the court.

14 “(2) Any party to such proceeding may obtain a
15 review of any order served pursuant to paragraph (1) of
16 this subsection (other than an order issued with the consent
17 of the director or officer concerned, or an order issued under
18 subsection (e) of this section), by filing in the court of
19 appeals of the United States for the circuit in which the
20 principal office of the licensee is located, or in the United
21 States Court of Appeals for the District of Columbia Circuit,
22 within thirty days after the date of service of such order,
23 a written petition praying that the order of the Adminis-
24 tration be modified, terminated, or set aside. A copy of
25 such petition shall be forthwith transmitted by the cl

1 of the court to the Administration, and thereupon the Ad-
2 ministration shall file in the court the record in the proceed-
3 ing, as provided in section 2112 of title 28 of the United
4 States Code. Upon the filing of such petition, such court
5 shall have jurisdiction, which upon the filing of the record
6 shall, except as provided in the last sentence of said para-
7 graph (1), be exclusive, to affirm, modify, terminate, or
8 set aside, in whole or in part, the order of the Administra-
9 tion. Review of such proceedings shall be had as provided
10 in the Administrative Procedure Act. The judgment and
11 decree of the court shall be final, except that the same
12 shall be subject to review by the Supreme Court upon
13 certiorari as provided in section 1254 of title 28 of the
14 United States Code.

15 “(3) The commencement of proceedings for judicial
16 review under paragraph (2) of this subsection shall not,
17 unless specifically ordered by the court, operate as a stay
18 of any order issued by the Administration.

19 “UNLAWFUL ACTS AND OMISSIONS BY OFFICERS, DIREC-
20 TORS, EMPLOYEES, OR AGENTS; BREACH OF FIDUCIARY
21 DUTY

22 “SEC. 314. (a) Wherever a licensee violates any pro-
23 vision of this Act or regulation issued thereunder by reason
24 of its failure to comply with the terms thereof or by reason
25 of its engaging in any act or practice which constitutes or

1 will constitute a violation thereof, such violation shall be
2 deemed to be also a violation and an unlawful act on the
3 part of any person who, directly or indirectly, authorizes,
4 orders, participates in, or causes, brings about, counsels, aids,
5 or abets in the commission of any acts, practices, or trans-
6 actions which constitute or will constitute, in whole or in
7 part, such violation.

8 “(b) It shall be unlawful for any officer, director, em-
9 ployee, agent, or other participant in the management or
10 conduct of the affairs of a licensee to engage in any act
11 or practice, or to omit any act, in breach of his fiduciary
12 duty as such officer, director, employee, agent, or participant,
13 if, as a result thereof, the licensee has suffered or is in im-
14 minent danger of suffering financial loss or other damage.

15 “(c) Except with the written consent of the Adminis-
16 tration, it shall be unlawful—

17 “(1) for any person hereafter to take office as an
18 officer, director, or employee of a licensee, or to become
19 an agent or participant in the conduct of the affairs or
20 management of a licensee, if—

21 “(A) he has been convicted of a felony, or
22 any other criminal offense involving dishonesty or
23 breach of trust, or

24 “(B) he has been found civilly liable in dam-

1 ages, or has been permanently or temporarily en-
2 joined by an order, judgment, or decree of a court
3 of competent jurisdiction, by reason of any act or
4 practice involving fraud or breach of trust; or

5 “(2) for any person to continue to serve in any of
6 the above-described capacities, if—

7 “(A) he is hereafter convicted of a felony, or
8 any other criminal offense involving dishonesty or
9 breach of trust, or

10 “(B) he is hereafter found civilly liable in
11 damages, or is permanently or temporarily enjoined
12 by an order, judgment, or decree of a court of com-
13 petent jurisdiction, by reason of any act or practice
14 involving fraud or breach of trust.

15 “PENALTIES AND FORFEITURES

16 “SEC. 315. (a) Except as provided in subsection (b)
17 of this section, a licensee which violates any regulation or
18 written directive issued by the Administrator, requiring the
19 filing of any regular or special report pursuant to section 310
20 (b) of this Act, shall forfeit and pay to the United States a
21 civil penalty of not more than \$100 for each and every day
22 of the continuance of the licensee's failure to file such re-
23 port, unless it is shown that such failure is due to reasonable
24 cause and not due to willful neglect. The civil penalties pro-
25 vided for in this section shall accrue to the United States

1 and may be recovered in a civil action brought by the
2 Administration.

3 “(b) The Administration may by rules and regulations,
4 or upon application of an interested party, at any time pre-
5 vious to such failure, by order, after notice and opportunity
6 for hearing, exempt in whole or in part, any small business
7 investment company from the provisions of subsection (a)
8 of this section, upon such terms and conditions and for such
9 period of time as it deems necessary and appropriate, if the
10 Administration finds that such action is not inconsistent
11 with the public interest or the protection of the Adminis-
12 tration. The Administration may for the purposes of this
13 section make any alternative requirements appropriate to
14 the situation.

15 “JURISDICTION AND SERVICE OF PROCESS

16 “SEC. 316. Any suit or action brought under section
17 308, 309, 311, 313, or 315 by the Administration at law
18 or in equity to enforce any liability or duty created by, or
19 to enjoin any violation of, this Act, or any rule, regulation,
20 or order promulgated thereunder, shall be brought in the
21 district wherein the licensee maintains its principal office,
22 and process in such cases may be served in any district in
23 which the defendant maintains its principal office or transacts
24 business, or wherever the defendant may be found.”

1 SEC. 8. (a) Section 4(b) of the Small Business Act
2 is amended by striking out "three Deputy Administrators"
3 and inserting in lieu thereof "a Deputy Administrator and
4 three Associate Administrators (including the Associate
5 Administrator specified in section 201 of the Small Business
6 Investment Act of 1958)".

7 (b) Such section is further amended by adding at the
8 end thereof the following: "The Deputy Administrator shall
9 be Acting Administrator of the Administration during the
10 absence or disability of the Administrator or in the event
11 of a vacancy in the office of the Administrator."

12 (c) (1) Section 303(d) of the Federal Executive
13 Salary Act of 1964 is amended by adding at the end thereof
14 the following:

15 "(70) Deputy Administrator of the Small Business
16 Administration."

17 (2) Section 303(e) (11) of such Act is amended by
18 striking out "Deputy Administrators of the Small Business
19 Administration (4)" and inserting in lieu thereof "Asso-
20 ciate Administrators of the Small Business Administra-
21 tion (3)".

22 SEC. 9. (a) The table of contents of the Small Business
23 Investment Act of 1958 is amended—

24 (1) by striking out the items describing the con-

17

1 tents of sections 309 and 310 and inserting in lieu
2 thereof the following:

“Sec. 309. Revocation and suspension of licenses; cease and desist orders.

“Sec. 310. Examinations and investigations.”;

3 and

4 (2) by inserting at the end of that part which
5 describes the contents of title III the following new
6 items:

“Sec. 313. Removal or suspension of directors and officers of licensees.

“Sec. 314. Unlawful acts and omissions by officers, directors, employees, or
agents; breach of fiduciary duty.

“Sec. 315. Penalties and forfeitures.

“Sec. 316. Jurisdiction and service of process.”

FINANCIAL INSTITUTIONS SUPERVISORY AND INSURANCE ACT OF 1966

TUESDAY, SEPTEMBER 20, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m. in room 2128, Rayburn House Office Building, Hon. Wright Patman (chairman) presiding.

Present: Representatives Patman, Multer, Barrett, Mrs. Sullivan, Ashley, Stephens, St Germain, Gonzalez, Weltner, Gettys, Hansen, Annunzio, Rees, Widnall, Mrs. Dwyer, Halpern, Harvey, Talcott, Clawson, Stanton, and Mize.

The CHAIRMAN. The committee will please come to order.

This morning the committee resumes public hearings on S. 3158, the financial institutions supervisory bill.

Our witnesses include the Honorable Claude Pepper, a Representative in Congress from the Third District of Florida. Congressman Pepper will testify on S. 3158, as well as his own bill, H.R. 17703.

Other witnesses are Mr. Arthur Courshon, representing the National League of Insured Savings Associations, Mr. Norman Strunk, representing the United States Savings and Loan League, Mr. George L. Bliss, representing the Council of Mutual Savings Institutions, and Mr. Hollis Burt, representing the National Association of Supervisors of State Banks.

We will hear from Congressman Pepper first, and ask him to briefly describe for the committee the main differences between his bill and S. 3158. Because of the large number of witnesses this morning, I will ask each witness to limit his oral presentation to 10 minutes. That is in order to give the members an opportunity to ask questions, and we will probably bring out the points the witnesses would want to bring out anyway. And there would be a saving of a little time.

So Congressman Pepper, you may proceed. And the others, I think I will ask them to come around here to the witness table, if you will—all whose names I called, in the order in which I called them, please. Mr. Courshon, Mr. Strunk, Mr. Bliss, Mr. Burt.

All right, Congressman Pepper. You may proceed in your own way.

STATEMENT OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. PEPPER. Thank you, Mr. Chairman, and members of the committee. I could not be here without saying what a privilege it is for me always to return to this great committee with which I had the privilege of two such pleasant and meaningful years of service.

First, Mr. Chairman, I want to make it very clear that I have a personal and financial relationship to the savings and loan industry, so that anyone who wishes to do so may evaluate that interest and connection in relation to anything that I say.

In 1952, while I was out of Congress, I was attorney for a group of very able citizens, including Mr. Arthur Courshon here, in applying for a charter for a savings and loan association. The charter was granted, the association was established. I am pleased to say that it has now something like \$130 million or more in assets.

I feel it has rendered a valuable contribution to our area.

I am an officer, although not active in the management—I am a director and have been since the inception of the institution, with Mr. Courshon and his office, associate general counsel. My office, of course, handles principally the affairs of the association on my behalf. I am also general counsel for another savings association, at Cocoa, Fla.

I have spoken at a good many national and international meetings of savings and loan associations.

I hope that my association with the savings and loan industry has also, Mr. Chairman and members of the committee, given me a little better understanding than I would otherwise have of the nature and the importance of this great industry which now, I believe, I heard Mr. Horne say, has assets in the United States of something like \$130 or \$140 billion.

So this legislation is very vital to our country, as well as to the associations which are involved directly in it and, of course, to the great banking industry of our country.

Now, Mr. Chairman, I am here today to favor the policy of giving authority to the Home Loan Bank Board for sound and desirable regulations of the savings and loan industry, and of course for the Federal Reserve Board and the Federal Deposit Insurance Corporation to have appropriate authority with respect to the institutions over which they have supervisory responsibility.

As a matter of fact, in March, March 18, 1964, I introduced in the House H.R. 10494, one of the first bills that would have given authority to the Home Loan Bank Board to issue cease-and-desist orders, and to exercise other authority which is involved in the Senate bill, and had the Home Loan Bank Board—I feel I must say—given its support to that bill, they could now, since some time in 1964, have had authority to issue cease-and-desist orders in a manner that perhaps would have been helpful to them in meeting some of the problems about which they have told or will tell this honorable committee.

The basic difference that I come here to emphasize today between the approach of the Senate bill and the approach of H.R. 17703 which I have offered in expression of my views and the views of many others in the industry, particularly the National League for Insured Savings—the difference, I say, Mr. Chairman and members of the committee, is the degree of authority to be given to the Home Loan Bank Board in the definition of its power to regulate and the degree of judicial review which shall be permitted with respect to the exercise of that power.

For example, in respect to a cease-and-desist order, under our bill, the only authority for the issuance of such an order would be that the

association, in the opinion of the Board, as expressed by appropriate resolution, has violated a law or a regulation of the Board.

Now, that is a definable criterion. That is the kind of a criterion a court may review to determine whether there was a law or whether there was a regulation violated by the association.

Now, the Senate bill lays down these criteria—and I am reading from page 3 of the bill:

If in the opinion of the Board an association is violating, has violated or the Board has reasonable cause to believe that the association is about to violate a law, rule, regulation or charter or other condition imposed in writing by the Board or written agreement entered into with the Board, or is engaging or has engaged or the Board has reasonable cause to believe that the association is about to engage in an unsafe or unsound practice, the Board may issue and serve upon the association a notice of charges in respect thereof.

Now, what is unsafe or unsound practice? That is a matter of judgment. How is a court going to review what is an unsafe or unsound practice if there is no definition in the law?

Now, here are the additional criteria on page 4 of the Senate bill:

Whenever the Board shall determine that the violation or the unsafe or unsound practice or practices specified in the notice of charges served upon the association pursuant to paragraph 2(a) of this subsection, or the continuation thereof, is likely to cause insolvency as defined in paragraph 6(a)1 of this subsection, or substantial dissipation of assets or earnings of the association, or is likely to otherwise seriously prejudice the interests of its savings account holders—

What do you mean “seriously prejudice the interests”; how is a court going to review without definition of law what you mean by “seriously prejudice the interests of its savings accounts holders”?

The Board may issue a temporary order—

And so on.

Now, there, then, is the first distinction in approach which I wish to emphasize to this honorable committee.

Do you wish to limit the right of the Home Loan Bank Board to issue a cease-and-desist order to definable criteria, such as law or regulation? Since the Home Loan Bank Board is expressly given the power to issue rules and regulations, it would seem to me that it would be able to issue regulations that would substantially cover all substantial and significant possible violations or improper conduct on the part of savings and loan associations.

Now, that is the first thing.

The second thing with which we have a strong difference of opinion with the Senate bill is this—and this difference is presented in our bill. That is with respect to what kind of judicial review shall be possible after a cease-and-desist order becomes final.

Under the Senate bill, the only recourse for the aggrieved association or party is the right of appeal to the court of appeals, a circuit court of appeals. And when you get there, as an aggrieved party, the only question before the court of appeals is whether or not there is substantial evidence to justify the administrative action taken by the Home Loan Bank Board.

Now, what would our bill provide? And by the way, Mr. Chairman, after giving more thought to this matter and discussing it with those who have a similar point of view to mine, I wish to propose certain

amendments to our bill, and they will be embodied in writing and filed with your honorable committee, or a clean bill will be introduced; but I will give what they are in substance.

Our bill will provide that once there is found to be a violation of a law, rule or regulation, propounded and promulgated by the Board, the Board may put a cease-and-desist order into effect. No court can hold it up. And that order will remain in effect until or unless it may finally, after all of the judicial procedures that may be possible, have—determine whether or not it is to remain permanently in effect.

In other words, our bill, as amended, will not be subject to the criticism that the Board can never get anything done. If they try to put into effect a cease-and-desist order under our bill as filed, the court could review it, and it might set it aside, and they might not be able to get that order effective until 2 or 3 years had elapsed maybe, when all the judicial proceedings had finally been taken.

Now, we are changing that so as to eliminate that criticism, and saying that we think there should be some definable criteria for the issuance and the finalization of a cease-and-desist order, but once those criteria are found to exist by the Board, they may put the order into effect, and it will stay into effect until some court in final exercise of judicial power sets it aside.

Now, what could be wrong with that? You don't interfere with them, you let them go ahead, but you say that review may be had.

Now, here is the second difference, if I may, that is. That the right of review shall not be before a court of appeals where the only thing the aggrieved party can assert is that there was no substantial evidence to sustain the action of the Board. The review would be before the appropriate and ordinary courts of the land—the district court in the area where the association is located, or in the District of Columbia, with the usual right of appeal, and the power of the court would be complete to review the order to determine whether or not it was a proper order, including the power to take testimony if the court should find it might be necessary to have additional evidence before it in ruling upon the matter.

Now, what is wrong with the Home Loan Bank Board being subjected to the same requirements that other citizens in the protection of their interests of this country are subjected to; namely, the right of ordinary review in the courts according to the ordinary principles of law.

Now, that is the basic difference.

So in respect to the cease-and-desist order, we say put it into effect, once reasonable criteria have been found to be satisfied by the Board, keep it in effect unless in a proper review the courts of the land who have authority to exercise the same power they ordinarily have in a lawsuit set it aside.

Now, that is the first thing.

Mr. BARRETT. I just want to ask you this question. Do I comprehend you to mean that you would put no time limit on this being reviewed by the court?

Mr. PEPPER. Well, the time limit are the rules of law that ordinarily prevail to review. But what I am emphasizing, I will say to my friend from Pennsylvania, is the Board has no right to say "We cannot

exercise our supervisory power because you are going to delay us in the courts." The power would have been exercised, the cease-and-desist order would be in effect, and it would be upon the association or the aggrieved party the responsibility to get it set aside.

I am emphasizing that—

The CHAIRMAN. Congressman, I wonder if it would be all right for the others to speak, and then you can comment further. - And also each one of you will have the privilege of editing your remarks to embrace anything you desire to embrace in your testimony that comes up in the questioning or otherwise.

Mr. PEPPER. Mr. Chairman, may I just take a minute or two to say this?

Now, the same principle applies to the appointment of a conservator. Under our bill, as it will be amended, the Board, when the criteria that are proper—we make a little difference in our criteria to have a little bit more definiteness in the nature of those criteria. But if the Board finds the criteria to exist, it can appoint a conservator or receiver, he will stay in office unless and until the courts might, by a proper review, set it aside. So they are not being hampered in their power to appoint a conservator. The only other major difference, Mr. Chairman, is this: We do not have in our bill any power on the part of the Board to remove an officer, because we think authority already exists in the Board to tell a board of directors, which does have authority to remove an officer, that if you don't get rid of this officer, whose conduct we believe is dishonest, we will be forced to file a cease-and-desist order or to appoint a conservator for your institution.

Now, I would rather have that power exercised that way through the local board, which can get effective results, than to give the Board the right to pick and choose to remove directors and officers all over the United States.

Thank you very much, Mr. Chairman.

Mr. BARRETT. Mr. Chairman.

The CHAIRMAN. Mr. Barrett.

Mr. BARRETT. I did not know of the background of our distinguished former member of this committee until he came here and made these expressions this morning. I never knew that you were intimately associated with the building and loan industry as you have pointed out here.

Now, I am convinced that my commendations on you heretofore—that you have proven to be one of the most knowledgeable and most capable members that ever graced this forum.

Mr. PEPPER. I thank you.

Mr. BARRETT. It is certainly a pleasure to have you here, to be able to make this commendation this morning.

Mr. PEPPER. Thank you very much.

The CHAIRMAN. I share the views of the gentleman from Pennsylvania, Mr. Barrett. I have known Congressman Pepper a long time—when he was in the U.S. Senate a long time. I know we had a lot in common. He oftentimes introduced a bill in the Senate and I introduced it in the House, indicating we did have a lot in common.

Mr. PEPPER. Mr. Chairman, whether this is the right time to do it or not, I have a comparison of this bill, H.R. 17703, that we have j

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introduced, with H.R. 10494 that I introduced in the 88th Congress that I would like to introduce into the record.

Also a comparison of H.R. 17703 with present law, and also a comparison of H.R. 17703 with the Senate bill, S. 1358.

The CHAIRMAN. They may be inserted.

(The comparisons referred to follow:)

COMPARISON OF H.R. 17703, 89TH CONGRESS, WITH H.R. 10494, 88TH CONGRESS, BOTH INTRODUCED BY REPRESENTATIVE PEPPER

H.R. 17703, the Financial Institutions Supervisory Act of 1966, includes the context of the provisions in H.R. 10494, the 1964 Enforcement Sanction Amendments to the Home Owners' Loan Act of 1933.

The highlights of H.R. 10494 are as follows. It applied only to Federal savings and loan associations and granted the Federal Home Loan Bank Board cease and desist order power over such associations, while providing for judicial recourse to Federal district courts, which were granted jurisdiction to adjudicate issues of fact and law.

It permitted issuance of cease and desist order proceedings for violation of a law or regulation. The order would become effective upon service. Within 30 days thereafter, management could request review by a Federal district court. The court could consider law and fact and sustain or set aside the cease and desist order. Upon a showing of irreparable damage, an association could request the court for an interlocutory injunction against the cease and desist order temporarily staying operation of the order pending decision on application for the injunction.

That bill abolished the office of Supervisory Representative in Charge, who under present law, takes over control of an association ex parte and without notice but only pending appointment of a conservator or receiver. Under the bill the Federal Home Loan Bank Board would be required to obtain a Federal district court order to appoint a conservator or receiver. The court could order the Board to do so ex parte and without notice in an emergency involving substantial dissipation of assets or loss of effective managerial control of the association. No conservator or receiver would be appointed unless the court feels a cease and desist order wouldn't effectively protect the public, the savers in the association, and FSLIC. Court proceedings would be expedited as preferential cases. The court would not be bound by previous conclusions of fact or law by the Board.

The Board could appoint a conservator or receiver itself if the board of directors or the members of an association consent.

Incumbent members, officers, directors and attorneys of an association would be authorized to contest proceedings under this section 5 of the Home Owners' Loan Act of 1933, and the Board could allow them reimbursement of expenses and attorneys' fees.

Except with Federal Home Loan Bank Board consent, no one could serve as director, officer or employee of an association who had been or is convicted of dishonesty or breach of trust. The penalty for violation would be a fine of up to \$100 a day to be collected from the association by the Board for its use.

H.R. 17703 likewise contains all of the provisions that were in H.R. 10494. In addition, H.R. 17703 does the following.

It applies these same provisions to State-chartered savings and loan associations having accounts insured by FSLIC and to banks having deposits insured by FDIC.

In the case of State-chartered savings and loan associations or banks, it requires the Federal regulatory agency to inform the State supervisory agency of a time which corrective action is to be taken against an association. If no such action is taken by that time, the controversy is referred to a Federal district court for settlement.

A two-year cutoff date would be provided for past violations that may serve as grounds for cease and desist order proceedings.

Administrative hearings would be private unless the private party involved requests a public hearing.

Compulsory attendance of witnesses or production of documents could be required only in State the hearing is held. Witnesses or documents out-

side that State could be required to appear or be produced in the State where located.

A cease and desist order would become effective 30 days after service.

The interlocutory injunction procedure could stay action by the Board only upon a showing that irreparable damage would otherwise ensue.

Cease and desist orders would be prohibited from use to limit dividend rates on savings, to appoint or remove officers or directors, to assume any managerial function, or to assume any association shareholder's or stockholder's prerogative.

If a person convicted of a felony involving dishonesty or breach of trust within the preceding 5 years serves an association without Board consent, the maximum penalty upon conviction would be \$100 fine per day or 10 days' imprisonment for each day's violation, or both, against the person, rather than a fine against the association, as in H.R. 10494.

As to termination of insurance proceedings against State-chartered institutions, they are not to be commenced until cease and desist proceedings are conducted first.

COMPARISON OF H.R. 17703 WITH PRESENT LAW

This comparison will consider separately the three basic parts of H.R. 17703, namely

- I. Federal Savings and Loan Associations.
- II. FSLIC-Insured Associations.
- III. Banks Insured by FDIC.

I. Federal savings and loan associations

1. Section 5(d) (1) of the Home Owners' Loan Act of 1966 presently contains provisions for an administrative hearing by a hearing examiner under the Administrative Procedure Act for alleged violation of law or regulation. After the hearing, the Federal Home Loan Bank Board adjudicates the case and may issue a suitable order requiring correction of any violation found.

Within 30 days after notice of an alleged violation is served, the Board or the association affected may apply to a Federal district court for declaratory judgment and injunction or other relief.

The Board may also apply to Federal district court for enforcement of its final orders. An association may appeal from a final Board order as provided in the Administrative Procedure Act. The present Home Owner's Loan Act provision expressly requires the court review to be upon the weight of the evidence.

In place of these provisions, H.R. 17703 substitutes a formalized cease and desist order procedure under the Administrative Procedure Act. Grounds are limited to violation of law or regulation within the past two years. The hearing would be private unless the affected party requests a public hearing. A cease and desist order issued as a result of the hearing would take effect 30 days after service.

An interlocutory injunction against the Board sought by an aggrieved person after service of notice of an alleged violation could be issued by a Federal district court only on a showing that irreparable damage would otherwise ensue.

The Board may request the Federal district court to enforce compliance with a final cease and desist order.

Within 30 days after service of a cease and desist order, a savings and loan association or aggrieved person may petition a Federal district court for review of law and fact. The court reviews the record and may try the case from scratch if circumstances warrant. The court is not bound by previous conclusions of the Board. Alternative administrative remedies need not be exhausted before seeking court action.

By definition, cease and desist orders exclude control of dividends on savings or interest on loans, appointment or removal of association personnel, assumption of any managerial functions, or assumption of shareholders' or stockholders' prerogatives.

2. Section 5(d) (2) of the Home Owners' Loan Act of 1933 allows the Board to appoint a conservator or receiver for specified grounds, after providing opportunity for a hearing under the Administrative Procedure Act. Court review may be had under that Act on the weight of the evidence. In an emergency, the Board may ex parte and without notice name a Supervisory Representative in Charge for a limited time pending appointment of a conservator or receiver.

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Existing case law holds that in its discretion, the Board may act under section 5(d) (2) without first using its hearing procedures under section 5(d) (1).

H.R. 17703 changes the grounds for conservatorship or receivership (1) by including willful and substantial dissipation of assets or earnings due to violation of law or regulation instead of merely violation of law or regulation; (2) by adding willful and substantial violation of a final cease and desist order; and (3) by deleting unsafe or unsound operation.

It deletes the office of Supervisory Representative in Charge.

It requires that the Board obtain a Federal district court order for appointment of a conservator or receiver, except where the board of directors or members of an association otherwise consent. In an emergency involving substantial dissipation of assets or loss of effective managerial control, the court may order the Board to appoint a conservator or receiver *ex parte* and without notice. In any case the court will issue an order for a conservator or receiver only if it believes a cease and desist order won't effectively protect the public, savers and FSLIC.

Appointment of a receiver constitutes a default under Title IV of the National Housing Act enabling FSLIC to pay insurance proceeds to savers.

Incumbent personnel of an association may contest any cease and desist order proceedings or proceedings to appoint a conservator or receiver.

Except with Board consent, no one can serve as association personnel who within the preceding 5 years was convicted of felonious dishonesty or breach of trust. For conviction of willful violation of this restriction, the person is subject to a maximum fine of \$100 per day or 10 days imprisonment for each day's violation or both.

II. *FSLIC-insured associations.*

1. Section 407 of Title IV, National Housing Act provides a procedure for terminating FSLIC insurance either voluntarily or by Board action. Grounds for Board action are (1) violation of duty as an insured institution, (2) continuing unsafe or unsound practices in business, and (3) knowingly or negligently permitting officers or agents to violate any applicable law or regulation. The Board is to give a statement to the supervisory authority to obtain correction, and a copy to the association. If not corrected in 120 days or a shorter time fixed by the supervisory authority, the Board may give the association not less than 30 days' notice of intention to terminate its insurance. A hearing is set before the Board, a member or a designee. If after hearing (unless the association forfeits by nonappearance) the Board finds a ground for terminating insurance, it may issue an order terminating insured status on a date after the finding and after the time set in the notice of intention to terminate. The hearing is under the Administrative Procedure Act and is subject to review under that Act by a court on the weight of the evidence. Insurance continues for 2 years after termination of insured status, in favor of sums then insured and maintained in the association, but not in favor of new money. The association must pay as a final premium twice its last annual premium upon termination of its insured status. It must notify its members of such termination, else the FSLIC may give notice.

2. H.R. 17703 makes the following changes in this procedure:

(a) It requires use of cease and desist order proceedings before use of the foregoing proceedings to terminate insurance.

(b) As grounds for cease and desist order proceedings, it specifies violation of law regulation within the past 2 years. It provides cease and desist procedure for insured associations parallel to that provided for Federal associations, as noted under heading I above, providing the same recourse to judicial review.

(c) It also requires that FSLIC notify the State supervisor of any cease and desist order proceeding or termination of insurance proceeding involving a State-chartered institution. FSLIC must specify a time within which the State supervisor is to accomplish corrective action. If no such action occurs, FSLIC may within 30 days refer the resulting controversy to a Federal district court for appropriate adjudication. The court is to act *de novo*.

III. *Banks insured by FDIC.*

1. Section 8 of the present Federal Deposit Insurance Act provides a procedure for termination of insurance of accounts voluntarily or by action of the FDIC Board. Grounds for Board action are (1) continued unsafe or unsound practices in business, and (2) knowingly or negligently permitting bank of-

ficers or agents to violate an applicable law or regulation. If the Board finds such a ground, it notifies the Comptroller of the Currency (for national and D.C. banks) the State supervisory authority (for State banks not members of the Federal Reserve System) and the Federal Reserve Board (for State banks that are members of the Federal Reserve System) by giving a statement of such practices or violations to secure correction, with a copy to the bank. Unless corrected within 120 days or shorter time as the above 3 regulatory agencies respectively, may require, the Board may give the bank not less than 30 days' notice of intention to terminate its insured status. A hearing is provided before the Board or a designee at which evidence may be produced, upon which the Board makes conclusive findings. If the bank doesn't appear at the hearing, it is deemed to consent to termination of insurance. If the Board finds an alleged practice or violation exists and hasn't been timely corrected, it may order insured status terminated on a date after the findings and after the time set in the notice of intention to terminate. FDIC may publish notice of termination. The bank is to notify depositors. Deposits on hand and maintained continue insured for 2 years after termination of insured status. The bank continues to pay assessments during that period.

Termination of insured status requires removal of Federal Reserve membership, and receivership for a national bank. Generally, if a member bank ceases to be a Federal Reserve member, its insured status terminates.

An FDIC-insured bank that stops receiving deposits other than trust funds, will have its insured status terminated.

The insured status of a bank whose liabilities are assumed by another bank will terminate upon FDIC's receipt of evidence of such assumption. It may terminate in 6 months upon 30 days' notice to depositors of the bank whose liabilities are assumed.

2. H.R. 17703 adds to these provisions the following:

(a) Cease and desist order proceedings paralleling those noted under headings I and II for savings and loan associations, with like recourse to judicial review.

(b) Procedure for handling actions involving State banks are identical with those under heading II involving State-chartered savings and loan associations. This means that unresolved controversies between Federal and State authorities may be submitted to a Federal district court for settlement.

3. It should be noted that present law (12 U.S.C. 77) provides procedure whereunder an officer or director of a national or D. C. bank or a State bank that is a Federal Reserve System member may be removed from office for violating law or continuing unsafe or unsound practices in business, after warning. For national and D. C. banks, the Comptroller of the Currency is to certify the facts to the Federal Reserve Board, which grants an opportunity to the accused for hearing, and may on finding a violation order him removed. The Federal reserve agent certifies the facts in the case of a State member bank of the Federal Reserve System. FDIC has no such express removal authority.

4. H.R. 17703 contains no provisions for suspension or removal of officers or directors of banks, thus leaving the above provisions of present law in effect.

COMPARISON OF H.R. 17703 WITH S. 3158 AS THE LATTER BILL PASSED THE SENATE ON AUGUST 22, 1966

H.R. 17703 is the less inclusive of these two bills. Briefly, it provides cease and desist order procedure for the Federal Home Loan Bank Board as to Federal savings and loan associations, FSLIC-insured associations, and FDIC-insured banks; and modifies grounds and procedure for appointing conservators and receivers of Federal associations.

S. 3158 includes such cease and desist order procedure and different provisions as to conservators and receivers. It expands the cease and desist procedure by authorizing issuance of temporary cease and desist orders where the alleged violation is likely to cause insolvency, substantial dissipation of assets or earnings, or serious prejudice to savers. It also contains other grants of power to the regulatory agencies. It empowers them to suspend and remove officers and directors and other personnel of a financial institution in cases involving personal dishonesty. This power extends to cases where the person, in the Board's opinion, has shown personal dishonesty and unfitness for service by incurring substantial loss in any business venture. Suspension may extend to anyone charged

with felonious dishonesty or breach of trust in an information, indictment or complaint authorized by a U.S. Attorney. He may be removed on final conviction. If all directors of an association are suspended, the Federal Home Loan Bank Board may appoint temporary directors.

It provides criminal penalties for anyone suspended or removed from service who takes part in the association's affairs or solicits or votes proxies or without Federal Home Loan Bank Board approval votes for a director or serves as director, officer or employee of any FSLIC-insured association.

It also provides a fine against an association using the services of a person convicted of dishonesty or breach of trust, except with Board consent.

Termination of FSLIC-insured status automatically ends Federal Home Loan Bank System membership of an association and vice versa.

Change in control of an insured association through transfer of stock or rights to vote is to be reported to FSLIC by the chief executive officer of the association. He is also to report a loan by an insured association (or FDIC-insured bank) secured by 25 per cent or more of the voting stock of an insured institution, unless the borrower owned the stock one year or more or unless it is stock of a newly organized association before it opens. Specified information is required in such reports. Thereafter the association is to report a change in its chief executive or any director in the next 12 months.

FSLIC may require current or former management personnel of any insured association and the association itself to provide such reports and disclosures as FSLIC determines appropriate to protect the investors or FSLIC. FSLIC may prescribe civil penalties for noncompliance.

Federal examiners are empowered to examine affairs of all affiliates of insured associations or banks at the expense of the association or bank.

The foregoing summarizes the areas of activity the Federal agencies would be given under S. 3158. Some more particular differences between H.R. 17703 and S. 3158 should be noted, as follows:

1. S. 3158 exempts the Federal Home Loan Bank Board from suits for money damages. H.R. 17703 does not, thus preserving the present provision of section 5(d) (1) of the Home Owners' Loan Act of 1933.

2. S. 3158 permits suit against the Board by a Federal association or its officers or directors. H.R. 17703 extends the privilege to any aggrieved person.

3. S. 3158 specifies the following as grounds for commencing cease and desist order proceedings (1) past, present or reasonable expectation of future violation of law, rule, regulation, charter or other written condition or written agreement with the Board, (2) past, present or reasonable expectation of future unsafe or unsound practice. H.R. 17703 specifies more limited grounds of present or past violation within 2 years of a law or regulation.

4. S. 3158 requires the administrative hearing to be private unless a public hearing is agreed to by the Board and the other party. H.R. 17703 provides for a private hearing and a sealed record unless the private party requests a public hearing.

5. Under S. 3158 the earliest access to the court is within 10 days after a temporary cease and desist order is issued. Under H.R. 17703 an aggrieved party can apply to court for an interlocutory injunction against Board action after service of a notice of cease and desist charges, but must show that irreparable damages would otherwise ensue.

6. Under S. 3158, appeal from a final cease and desist order may be made to a Federal Court of Appeals, which is to review it under the Administrative Procedure Act. This means the agency's order must be upheld if supported by substantial evidence. Under H.R. 17703 the appeal goes to a Federal district court, and court review is on the weight of the evidence, a more stringent test.

7. Under S. 3158, a reviewing court passes only on law, not fact. Under H.R. 17703 the court in its discretion may take evidence itself and conduct a trial of facts and law if circumstances warrant.

8. Under S. 3158, the court is bound by the agency's decision if the decision is supported by substantial evidence, even though the court itself might have reached a different decision on the law under the facts of the case. Under H.R. 17703 the court is not bound by the agency's decision.

9. Under S. 3158, presumably all administrative remedies must be exhausted before recourse may be had to the courts. Under H.R. 17703 this is not required.

10. Under S. 3158, no specific areas are excluded from operation of a cease and desist order. Under H.R. 17703, such an order excludes limits on dividends

on savings or interest on loans, appointment or removal of association personnel, assumption of managerial functions, and assumption of prerogatives of stockholders and shareholders of an association.

11. Grounds for appointing a conservator or receiver under S. 3158 include (i) insolvency, (ii) substantial dissipation of assets or earnings due to violation of law, rule, or regulation or due to unsafe or unsound practice, (iii) unsafe or unsound condition to do business, (iv) willful violation of a final cease and desist order and (v) concealment of books, papers or records. Grounds for similar action under H.R. 17703 are (i) insolvency, (ii) willful and substantial dissipation of assets or earnings due to violation of law or regulation, (iii) willful and substantial violation of a final cease and desist order, and (iv) concealment of books, paper or records.

12. S. 3158 permits a conservator or receiver to be appointed by the Board ex parte and without notice and allows the association to appeal to the Federal district court for removal. H.R. 17703 requires the Board to obtain a Federal district court order to appoint a conservator or receiver, and in an emergency the court may issue its order ex parte and without notice and the association may appeal to the court for removal.

13. S. 3158 does not require the Board to use cease and desist order procedure before resorting to appointment of a conservator or receiver. H.R. 17703 requires that the court permit appointment of a conservator or receiver only if in its opinion a cease and desist order would not effectively protect the public, savers and FSLIC.

14. S. 3158 prohibits any court from removing a conservator or receiver or affecting his powers except under the specific procedure permitted in the bill. H.R. 17703 contains no such restraint on the judiciary.

15. S. 3158 contains no provision like that in H.R. 17703 which makes appointment of a receiver an event of default under the FSLIC law, thus enabling FSLIC to pay out insurance proceeds.

16. S. 3158 restrains courts from affecting issuance or enforcement of any cease and desist or suspension or removal notice or order except to grant a stay as permitted by the specific appeal allowed to court under this bill. H.R. 17703 contains no such restraint.

17. S. 3158 provides that if an action is begun to remove a conservator or receiver, pending actions in any court under this subsection (d) must be stayed. H.R. 17703 contains no such restraint on courts.

18. S. 3158 bars persons convicted of a crime involving dishonesty or breach of trust from serving as director, officer or employee of an association, except with Board consent. H.R. 17703 applies the same rule to service as an officer or employee of the Board, but limits the ground to conviction within the past 5 years as to service for associations or the Board.

19. S. 3158 makes no express requirement for use of cease and desist order proceedings before commencing proceedings to terminate insurance of FSLIC-insured associations. H.R. 17703 requires use of cease and desist order procedures first, if applicable.

20. While S. 3158 contains no provision on the subject, H.R. 17703 expressly authorizes incumbent personnel or members of associations to contest cease and desist order proceedings or termination of insurance proceedings.

21. In the case of State-chartered institutions, S. 3158 provides that the Board notify State authorities in cases involving cease and desist order or suspension or removal proceedings (but not suspension or removal due to being charged with a felony). The Board is to state its intent to proceed against an association or person and state the grounds. It sets a time within which it asks the State authority to take corrective action. If no such action is taken within that time, the Board may act on its own. No private person can challenge the validity of any notice or order because these requirements are not satisfied.

H.R. 17703 requires like notice to State authorities in all cases under section 407 of the National Housing Act and under section 8 of the Federal Deposit Insurance Act. A time for corrective action is specified, but if such action is not taken then, the Federal agency may transfer the controversy to a Federal district court for settlement.

22. While S. 3158 has no similar provision, H.R. 17703 prohibits appointment of a bank conservator or receiver unless in the Federal bank regulatory agency's opinion a cease and desist order would not effectively protect the public, depositors or the agency.

In conclusion, it should be observed that while H.R. 17703 is much more restricted in scope than S. 3158, it would provide the regulatory agencies with cease and desist order procedure under recourse to judicial review that is both timely and adequate. The judicial review permitted by S. 3158 is quite restrictive and much more limited than under present Federal law applicable to savings and loan associations. H.R. 17703 contains no suspension or removal provisions as to association personnel, leaving to the usual law enforcement channels the punishment of criminal behavior on the part of any association personnel, and to boards of directors, stockholders and members of associations the removal of inept personnel. As to banks the present statutory provisions for removal of officers and directors would remain in effect.

The CHAIRMAN. I am inserting in the record at this point the statement from the Federal Home Loan Bank Board, and also from the Federal Reserve System. And we have another coming up. We will put them in the record.

(The agency reports referred to follow:)

FEDERAL HOME LOAN BANK BOARD,
Washington, D.C., September 19, 1966.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Your letter of September 15, 1966, requests a report on H.R. 17703, a bill introduced by Congressman Pepper on September 13, 1966. Title I of the bill would amend section 5(d) of the Home Owners' Loan Act of 1933, as amended, and section 407 of the National Housing Act, as amended, and Title II thereof would amend sections 3 and 8 of the Federal Deposit Insurance Act. This report is directed to Title I of H.R. 17703, since Title II affects the statutory authority of other agencies.

As you know, the President, in his January 1966 Economic Report, stated that appropriate regulations are clearly required to protect the safety of savings of American families and to assure the most efficient and effective regulation of financial institutions. Among other measures, the President recommended Congressional action on financial legislation to "arm regulatory agencies with a wider range of effective enforcement remedies". In accordance with this recommendation by the President, the Federal agencies having responsibility for the supervision and regulation of financial institutions are supporting S. 3158, the "Financial Institutions Supervisory Act of 1966", as enacted by the Senate on August 22, 1966, and in support of which I testified before your Committee on September 15, 1966.

S. 3158, which was transmitted to Congress on March 29, 1966, by the Secretary of the Treasury, the Chairman of the Federal Reserve Board, the Chairman of the Federal Deposit Insurance Corporation and myself, is designed to strengthen the present statutory authority of these agencies. The transmittal letter pointed out that existing supervisory remedies have proven inadequate in that taking custody of an institution is too severe for many situations, and terminating its insurance is so time-consuming and cumbersome that substantial injury may occur to the institution before any remedial action can be effected. S. 3158 is designed to correct this situation by providing for two additional intermediate remedies, less drastic than custody or termination of insurance, as follows:

First, the bill would authorize cease-and-desist proceedings in any case where an institution has violated law or regulation or has engaged in unsafe or unsound practices. Moreover, in conjunction with a cease-and-desist proceeding in the more serious cases, it would authorize issuance of temporary orders requiring the institution to cease the violations or practices forthwith, pending the outcome of a full hearing.

Second, the bill would provide authority for removal, after a hearing, of those directors or officers, who have committed violations of law or regulation or engaged in unsafe or unsound practices, or breached their fiduciary duty, causing substantial loss or damage to the institution. The Senate has narrowed this provision as originally drafted, by restricting it to cases involving personal discreditation on the part of the officer or director. If the gravity of the charges war-

ranted it, such director or officer could be suspended, pending the hearing on whether he should be removed from office. In addition, any director or officer who is charged with a felony involving dishonesty or breach of trust could be suspended or, if convicted, removed from office.

A reading of H.R. 17703 indicates that many of its provisions are similar to the draft bill submitted to the Senate Banking and Currency Committee by the National League of Insured Savings Associations, which appears at pages 320 to 336 of the transcript of the Senate hearings on S. 3158 and was considered by the Senate Banking and Currency Committee in reporting out S. 3158. However, H.R. 17703 would weaken the statutory authority of the supervisory agencies to an even greater extent than the National League's draft.

Whereas S. 3158 represents a conscientious effort to provide additional immediate remedies to the supervisory agencies, without sacrificing essential judicial safeguards for the rights of the institutions or of other persons concerned, H.R. 17703 appears to have been designed, not to strengthen supervisory authority over financial institutions, but rather to limit the authority vested in the agencies under existing law and to transfer their supervisory responsibilities to the courts. For example:

1. The only effective remedy that the Board has with respect to Federal associations—the power to appoint a conservator or receiver—would be narrowed, removed from the agency and vested in the District Court judges.

2. The bill would restrict the Federal Savings and Loan Insurance Corporation's authority to institute a cease-and-desist or a termination of insurance proceeding involving a State-chartered institution to cases where the Corporation first gave notice and a period of time to the State supervisory authority to take corrective action and then obtained a court order, after a trial in the district court, permitting it to proceed with remedial action. It would be hard to devise a procedure that would be more elaborate or make the remedy of less value.

3. The bill, unlike S. 3158, makes no provision for the suspension and removal of directors or officers even in cases involving personal dishonesty, or in cases where they are charged with or convicted of felonies involving dishonesty or breach of trust.

4. Practices that are demonstrably unsafe or unsound would not be grounds for cease-and-desist proceedings, such grounds being limited by the bill to violations of law or regulations.

5. The bill does not provide the issuance of immediately effective temporary cease-and-desist orders, no matter how damaging the violation.

6. The bill permits a trial de novo in a United States district court on a petition for review or enforcement of a cease-and-desist order issued by the agency after an administrative hearing. In any such action, the court is authorized by the provisions of the bill to determine all questions of law and fact at issue between the parties, "without being bound by any conclusions of law or fact previously made" by the agency. Under H. R. 17703, therefore, the entire administrative process is reduced to an empty futility; the administrative hearing, the record made therein, and the findings and conclusions made by the hearing officer or agency could be disregarded and the entire case tried anew by the district court.

7. Upon service of a notice of charges in a cease-and-desist proceeding, the institution could undertake to by-pass the administrative process and apply to a district court for an injunction restraining or setting aside any further action by the Board. Furthermore, the bill expressly provides that any action or proceeding authorized under the bill may be brought by an institution or other aggrieved person without exhausting administrative procedures or other available remedies.

Any such provision under which an institution may by-pass the administrative process would in effect circumvent the agency's primary duty and responsibility to make a determination on the issues raised in its charges against an institution, a matter which Congress has customarily committed in the first instance to the expertise and competence of administrative agencies. Moreover, it would run counter to the uniform pattern of the administrative proceedings established for other regulatory agencies and to the well established principle that a court will not take jurisdiction of a suit for relief from agency action where the plaintiff has failed to utilize his administrative remedies. It would also be contrary to the purposes and objectives of the Administrative Procedures Act, which is designed to afford opportunity for the settlement of numerous and complex controversies

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in a more flexible and informal manner by an agency thoroughly informed on the operations and trends of an industry, instead of burdening the courts with expensive and protracted litigation in unfamiliar areas.

8. A cease-and-desist order could not be issued at all if it has the effect of limiting the rate of dividends or interest payable on savings or loans, of appointing or removing any officer, director, employee, agent, or attorney of an institution, of assuming any "managerial function", or of assuming any "prerogative of shareholders or stockholders". One may speculate as to what area or field of operation of a financial institution, if any, could be the subject of a cease-and-desist order under the language of the bill.

9. The bill also fails to provide for some of the lesser but nonetheless important provisions of S. 3158 which could be extremely useful in improving the techniques and effectiveness of supervision and examination. Thus, there is no provision for notification of a change in control of insured savings and loan associations comparable to Public Law 88-593, enacted in the last Congress to cover banks insured by the Federal Deposit Insurance Corporation. Nor does the bill contain provisions which would increase the authority of Board and Federal Deposit Insurance Corporation examiners so that they can do a more effective job in making examinations of insured institutions.

In conclusion, I wish to reiterate that, in the Board's view, H.R. 17703 would undermine the enforcement authority of the Federal supervisory agencies and transfer supervisory authority from the Federal agencies to the courts, and that the bill would seriously impair rather than strengthen the existing capacity of the Federal agencies to safeguard the public interest and the integrity of our financial system. The Board would strongly recommend against the adoption of H.R. 17703.

Informal advice has been received from the Bureau of the Budget that, from the standpoint of the Administration's program, there is no objection to the submission of this report.

With kind regards, I am
Sincerely,

JOHN E. HORNE, *Chairman.*

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, September 19, 1966.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the Board's views on H.R. 17703, a bill to strengthen the regulatory and supervisory authority of Federal agencies over insured banks and insured savings and loan associations, and for other purposes. Because of the limited time available to study this bill, our comments will be restricted to the main features in which it differs from S. 3158. We are also commenting only on title II of the bill, inasmuch as we assume title I, dealing with savings and loan associations, will be the subject of comment by the Federal Home Loan Bank Board.

Title II of H.R. 17703 differs from the corresponding title of S. 3158 in four principal respects, one relating to suspension or removal orders and three relating to cease and desist orders. First, H.R. 17703 omits the provisions of S. 3158 relating to suspension or removal of directors, officers, and other persons participating in the management of banks. Insofar as member banks are concerned it would thus leave in effect the existing provisions of section 30 of the Federal Reserve Act, which have proved too drastic for use in most cases and too cumbersome to bring about prompt correction. Since the suspension and removal provisions of S. 3158 were amended in the Senate to limit their use to cases involving personal dishonesty, we believe that this authority would be of very limited use; nevertheless, in those rare instances when dishonest individuals might threaten the safety of a bank we believe the much more expeditious provisions of S. 3158 should be available for the protection of the public.

The difference between the two bills as regards cease and desist orders are of much greater importance, since the authority to issue such orders is, in our view, the heart of the bill. H.R. 17703 omits the provisions of S. 3158 relating to the issuance of temporary cease and desist orders to cope with emergencies. It also provides for *de novo* review in Federal district courts in which permanent cease and desist orders are issued, in con-

trast to S. 3158, which follows the standard pattern specified in the Administrative Procedure Act for review by Federal courts of appeal based on the record made at the administrative proceeding. The third difference as regards cease and desist orders between the two bills relates to State-chartered banks. S. 3158 provides that before the Federal supervisory agency may take action under the bill with respect to such a bank, it must notify the State supervisor and allow an appropriate time for the State supervisor to take action. Failing such action, the Federal agency may then proceed. Under H.R. 17703, however, the only action the Federal agency could take in such a situation would be to bring suit in a Federal district court to settle the question of which agency, if either, should be allowed to proceed. Taken together, these provisions of H.R. 17703 would so delay the taking effect of a cease and desist order as to render such a proceeding useless in emergencies and extremely cumbersome in other situations.

The Board of Governors, therefore, recommends against enactment of H.R. 17703.

Sincerely yours,

WM. MCC. MARTIN, Jr.

FEDERAL DEPOSIT INSURANCE CORPORATION,
Washington, September 21, 1966.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter of September 15, 1966, requesting this Corporation's views with respect to H.R. 17703, 89th Congress, a bill "To strengthen the regulatory and supervisory authority of Federal agencies over insured banks and insured savings and loan associations, and for other purposes."

Title I of H.R. 17703 relates solely to the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation and to the savings and loan associations and similar institutions within their jurisdiction. Therefore, we are restricting this report to the consideration of Title II of the bill, which relates to this Corporation, the Board of Governors of the Federal Reserve System and the Comptroller of the Currency and banks subject to their regulation and supervision.

The only new remedy made available to the Federal banking agencies by H.R. 17703 would be narrowly restricted authority to issue cease-and-desist orders. Such an order could be based only upon violations of law or regulation by an insured bank. It could direct the bank and its personnel to cease and desist from the particular violation or violations alleged and proven and to take action to correct conditions resulting from any such violation. There would be no provision for temporary orders pending a hearing and the procedure would be so time-consuming, involved, and susceptible to delaying tactics that cease-and-desist orders would not be useful to obtain prompt corrections even within their limited scope.

H.R. 17703 also would add to section 8 of the Federal Deposit Insurance Act a new subsection (i) relating to any action under that section involving a State-chartered bank. This would include proceedings by this Corporation against insured banks which are presently authorized by section 8(a) to terminate deposit insurance for continued unsafe or unsound practices or violations of law or regulation. While the intent of the new subsection (i) may be somewhat obscure, it would appear to require notice to the State supervisory authorities duplicating that presently required by section 8(a) and also require action by a United States district court prior to proceedings by this Corporation under section 8(a) in the case of a State-chartered bank. This could only render the existing authority to terminate deposit insurance even less useful in obtaining corrections by insured banks.

Another provision of H.R. 17703 would repeal section 19 of the Federal Deposit Insurance Act, which provides that, except with the consent of this Corporation, no person shall serve as a director, officer, or employee of an insured bank who has been convicted of any criminal offense involving dishonesty or a breach of trust. In lieu of that section, there would be enacted a more limited requirement which would permit persons convicted of offenses involving dishonesty or a breach

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of trust to serve insured banks without this Corporation's consent in some cases where consent would now be required.

As it has previously indicated in its endorsement of S. 3158, which is also pending before your Committee, this Corporation believes that there is need for additional statutory authority to enable the Federal banking authorities to move more quickly and effectively to require adherence to the law and cessation and correction of unsafe or unsound practices by insured banks. It is our opinion, however, that the provisions of H.R. 17703 with respect to cease-and-desist orders would have little, if any, value in accomplishing that end, and that, as noted above, other provisions of the bill might weaken the existing authority of the Federal banking agencies. This Corporation, therefore, does not favor the enactment of H.R. 17703 but, instead, again recommends that S. 3158 be enacted.

The Bureau of the Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

K. A. RANDALL, *Chairman.*

The CHAIRMAN. Our next witness will be Mr. Courshon.

Do you have a prepared statement, Mr. Courshon?

MR. COURSHON. Yes, I do, sir.

The CHAIRMAN. You may insert that in the record at this point and proceed in your own way, to summarize the statement, and then we will give each member an opportunity to interrogate you gentlemen.

STATEMENT OF ARTHUR H. COURSHON ON BEHALF OF THE NATIONAL LEAGUE OF INSURED SAVINGS ASSOCIATIONS

MR. COURSHON. My statement which consists of 12 pages, with exhibits A and B, I believe discusses the questions before you, and I will follow, therefore, if I may, sir, your suggestion that my oral statement be a summary of my general views on the proposition, so they are not redundant with the written statement I am presenting to the committee.

The CHAIRMAN. That may be inserted at this point without objection.

(The complete statement of Mr. Courshon follows:)

STATEMENT OF ARTHUR H. COURSHON ON BEHALF OF THE NATIONAL LEAGUE OF INSURED SAVINGS ASSOCIATIONS

Mr. Chairman and members of the Committee. On behalf of the National League of Insured Savings Associations, I appreciate the Committee's decision to hold public hearings on the Financial Institutions Supervisory Act of 1966, which provided the opportunity for my appearance before you today.

As I understand it, at least three bills are pending before the Committee on this topic, namely, H.R. 14159, H.R. 17703 and S. 3158. Each of these would follow a different path toward providing for Federal regulatory agencies in the savings and loan association and banking fields supervisory powers.

At the outset I want to make the position of the National League of Insured Savings Associations with regard to this type of legislation very clear.

The National League as long ago as 1964 endorsed a bill that would grant cease and desist order powers to the Federal Home Loan Bank Board, and would also afford management of an association an opportunity for a timely and adequate court review of Board actions in cease and desist order proceedings. The bill that contained these provisions was H.R. 10494, 88th Congress, introduced by Representative Pepper on March 18, 1964.

It contained provisions that were consistent with a July 5, 1961 report made by me as a member of the unofficial Task Force appointed by former Chairman Joseph P. McMurray of the Federal Home Loan Bank Board. My 1961 report was prepared at the request of Chairman McMurray.

Following introduction of H.R. 10494, the Federal Home Loan Bank Board arranged for introduction of a bill (S. 2677 and H.R. 10494, 88th Congress) on March 23, 1964 in the Senate and April 8, 1964 in the House. This bill included cease and desist order power for the Board over Federal savings and loan associations and added power to suspend and remove officers and directors of Federal associations. The opportunity for judicial review provided was much less favorable to associations than the provisions of the Pepper bill (H.R. 10494). For example, initial judicial review under the Board's bill would be in the Federal Court of Appeals rather than the Federal district court, and the court would be required to uphold an agency order supported by substantial evidence rather than having the court use for review the present standard of the weight of the evidence.

On October 2, 1964, the Board arranged for introduction of S. 3243 and H.R. 12788, 88th Congress. This bill would have extended the Board's cease and desist order power and power to suspend and remove officers and directors to State-chartered associations having accounts insured by FSLIC, as well as in the case of Federal associations. The bill would have continued the less desirable judicial review procedures contained in the Board's earlier bill (S. 2677 and H.R. 10748).

No similar legislative proposal was introduced in the Congress in 1965. But following an investigation that year by the Senate Government Operations Committee into criminal influence in banking, Chairman McClellan of that Committee introduced a bill (S. 2575, 89th Congress) designed to keep criminals out of banking. The bill contained no provisions affecting savings and loan associations except to direct the President to have the Secretary of the Treasury include "Federally insured savings and loan associations" in a study of supervisory functions. No Committee action has yet been taken on that bill. Following this, the Federal Home Loan Bank Board and two of the three Federal regulatory agencies in the banking field (not the Comptroller of the Currency) joined forces to obtain introduction of a bill (S. 3158 and H.R. 14150, 89th Congress) in the Senate on March 29, 1966, and in the House on March 30, 1966. This bill extended to banking (both national banks and State-chartered banks) the cease and desist order powers and suspension and removal powers the earlier bill would have made applicable only to savings and loan associations.

Hearings on S. 3158 were held by the Financial Institutions Subcommittee of the Senate Committee on Banking and Currency in April and May, 1966. Attached to this statement as Exhibit A is a comparison of S. 3158 as introduced and as passed by the Senate on August 22, 1966.

The position the National League supports is currently reflected in H.R. 17703, 89th Congress, introduced by Representative Pepper on September 13, 1966. Attached to this statement as Exhibit B is a comparison of H.R. 17703 with S. 3158 as passed by the Senate. As noted in Exhibit B, H.R. 17703 basically would grant the Board cease and desist order power over both Federal associations and FSLIC-insured State-chartered associations with timely and adequate judicial recourse.

The National League would like to note two specific points with reference to H.R. 17703. That bill would require the Federal Home Loan Bank Board to obtain a Federal district court order to appoint a conservator or receiver for a Federal association, but if in the court's opinion, an emergency is involved, the court order could be issued *ex parte* and without notice to the association involved. Under section 5(d)(2) of the present Home Owners' Loan Act, the Board may appoint a conservator or receiver only after granting opportunity for an administrative hearing under the Administrative Procedure Act. If the Board determines that an emergency exists requiring immediate action, it may appoint *ex parte* and without notice a Supervisory Representative in Charge, who for a limited period as prescribed by the statute, exercises the powers of a conservator or receiver. But both as introduced and as passed by the Senate, S. 3158 abolished the post of Supervisory Representative in Charge and in its place authorized the Board to appoint "ex parte and without notice" (even in the absence of an emergency) a conservator or receiver if in the Board's opinion a ground for appointment exists as provided in the bill.

The National League would be willing to support an amendment to H.R. 17703 that would continue the provisions of the present statute for appointing a Supervisory Representative in Charge, conservator or receiver, providing a finding is first required that the cease and desist order proceedings would not effectively protect the public interest.

In one other respect, the National League would willingly support an amendment to H.R. 17703 to permit the Board to issue temporary cease and desist orders, as long as timely and adequate judicial recourse is provided for associations from such action by the Board. Such a course of action could be permitted to the Board upon its written finding that the charged violation of law or regulation that forms the basis of notice of a cease and desist order proceeding will cause insolvency or substantial dissipation of assets or earnings of the association involved. Such a temporary order should be considered a final order for the purpose of judicial review. Within 10 days after its issuance, an aggrieved person should be permitted to apply to a Federal district court for appropriate relief. The court should have authority to conduct a trial of the facts and law at issue in the case de novo. This would be in line with the Administrative Procedure Act, since no full administrative hearing would have been held by the regulatory agency before issuance of its temporary cease and desist order.

We wish to make it plain, however, that we would support H.R. 17703 in its present form, rather than support S. 3158 as passed by the Senate.

H.R. 17703 would provide the Federal regulatory agencies with a cease and desist order power of a nature they now lack. It would at the same time afford associations opportunity for appropriate judicial review.

As noted in Exhibit B, S. 3158 would vest in the Federal regulatory agencies many powers in addition to those that would be granted by H.R. 17703. These additional powers should be subjected to careful scrutiny.

While the National League supports the approach to these problems taken by H.R. 17703, if this Committee decides it should take further time to consider the various approaches suggested to this legislation, the National League would have no objection to this course of action.

Indeed, there are factors that might make this solution seem advisable to the Committee.

Among them are the following:

1. The Federal Home Loan Bank Board has announced a \$400,000 study to be undertaken under the direction of Professor Irwin Friend of the Wharton School. One of the main announced topics for study is the supervisory power of the Federal Home Loan Bank Board.

2. The Judicial Review Committee of the Administrative Procedure Division of the American Bar Association in its Annual Report noted that it has S. 3158 under study. Your Committee may well wish to receive the valuable opinion of this objective group of attorneys representing a major professional organization.

3. On June 21, 1966 the Senate passed the Administrative Procedure Act of 1966 (S. 1336), which is now pending before the appropriate House committee. This bill constitutes a major revision of the existing Administrative Procedure Act. Its provisions dealing with Federal district court jurisdiction and scope of review deserve careful consideration regarding their relationship to proposed provisions in S. 3158 dealing with similar topics.

This late in the session, the House has little opportunity to examine in detail the provisions of the bills expressing efforts to confer on Federal agencies regulating financial institutions additional supervisory authority to that they now possess.

The Board is not without power now to supervise associations under its jurisdiction. Indeed its supervisory practices have been developed and improved over recent years. The National League favors adequate supervision in the public interest.

S. 3158 jeopardizes the dual system. Whereas the Federal government's relation to State-chartered associations is that of an insurance carrier, this bill would confer on the Federal government direct regulatory control over State-chartered associations.

H.R. 17703 would preserve the dual system of financial institutions by referring unsettled controversies between Federal and State supervisory authorities to a Federal district court for settlement. By contrast, S. 3158 as passed by the Senate merely in effect authorizes the Federal authority to issue an ultimatum dead end to the State authority by which the State must effect "corrective" action to the Federal authority or face independent action against the State authority by the Federal authority.

Now to this Committee, the Chairman of the Federal Home Loan Board acknowledged that the primary responsibility for supervision of

State-chartered associations is in the State supervisory authorities. But passage of S. 3158 in its present form would soon infringe on the ability of the State authorities to carry out that primary responsibility. The present spirit of cooperation between Federal and State authorities is largely attributable to their coequal status in their respective spheres. FSLIC under the direction of the Board can presently embark upon a series of procedural steps leading toward termination of account insurance of a State-chartered institution. It has seldom used this procedure effectively.

The Chairman in his recent testimony to this Committee alluded to the case history of Beverly Savings and Loan Association in Chicago, Illinois, noting the long period that elapsed from 1961 through an FSLIC examination in 1963 to placing the association in liquidation on October 1, 1963. Some members of the Committee appropriately inquired why the Board did not more expeditiously use the powers available to it to terminate insurance.

It is interesting to note that the Savings and Loan Commissioner of Illinois has stated with reference to Beverly, Tinley Park and Hillside Savings and Loan Associations that while they were insured by FSLIC in 1957 and 1958, joint examinations of all three in 1958 and 1959 resulted in considering all three serious supervisory problems at that time. He noted that corrective action was requested by both State and Federal authorities but no correction was made. Interestingly enough, he also stated that the record is clear that in 1960, the State authority could have taken custody and the Federal Home Loan Bank Board could have proceeded under section 407 of the National Housing Act to terminate insurance of accounts of the three associations. He stated that State records indicate that at a *June 1960* meeting with the Beverly management, a Federal Home Loan Bank Board agent stated that unless full corrective measures were taken by the association, the Supervisory Division of the Federal Home Loan Bank Board would recommend the commencement of proceedings to terminate insurance.

But the Chairman of the Federal Home Loan Bank Board started his allusion to the Beverly case with 1961, noted that actions objectionable to the Board were disclosed in a 1963 examination and pointed out that the Board issued a 120-day letter to commence an insurance termination proceeding on July 19, 1963. The association was placed in voluntary liquidation on October 1, 1963. The Chairman's account of the Beverly problems from 1961 on presumably pinpointed undesirable management practices as the cause of Beverly's problems. He cited these circumstances apparently to argue that cease and desist proceedings and suspension and removal proceedings are designed for different kinds of situations.

Might not the Committee wonder, however, why the Board waited until July 19, 1963 to even begin proceedings to terminate insurance when the State supervisor's records indicate that the Board's representative in June 1960 was seeking corrective measures from the association under a threat of recommending proceedings to terminate insurance and that examinations in an earlier year showed the association to be in trouble?

The mere existence of the authority to terminate insurance is of little value if not appropriately put to use when the occasion demands. The Committee may well question whether providing the Board with additional statutory authority will be likely to improve the situation or whether the Board will merely stockpile more statutory power to replace its seldom used existing "show cause" power under section 5(d)(1) of the Home Owners' Loan Act and to augment its seldom used power to terminate insurance under section 407 of the National Housing Act. In his testimony to your Committee, the Chairman of the Federal Home Loan Bank Board, looking toward the possibility that S. 3158 would not be enacted, stated:

"Should we continue to have no alternative, I suppose we should have to consider using custody or termination proceedings in a freer war and at earlier stages than we have so far believed appropriate."

If this is intended to indicate only faster action by the Board than was taken in the Beverly case, this would indeed be an acceptable alternative to hasty passage of S. 3158 in its present form.

In its report on H.R. 14026 dealing with temporary government controls on interest and dividend rates payable on savings (House Report No. 1777, July 29, 1966) your Committee stated at page 7:

"It is felt, however, that permanent legislation may well be necessary and your Committee is prepared to consider carefully in the near future the broader

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question of the respective roles of our financial institutions and their relationship to the overall economy and public policy goals."

The National League would respectfully observe that if your Committee is not willing to provide cease and desist order power to Federal regulatory agencies in the financial institution field through the medium of H.R. 17703, the appropriate extent of supervisory power to be vested in those agencies could properly form an area of study by your Committee as part of its review of the respective roles of financial institutions and their relationship to the overall economy and public policy goals.

Thank you for the opportunity to make these observations.

EXHIBIT A

COMPARISON OF S. 3158 AS INTRODUCED AND AS PASSED BY THE SENATE ON AUGUST 22, 1966

Before passing S. 3158, the Financial Institutions Supervisory Act of 1966, the Senate Committee on Banking and Currency made several changes in the bill as introduced by Senator Robertson for himself and Senator Bennett by request on March 29, 1966.

In its report on the bill (Report No. 1482, August 18, 1966) that Committee identified the following as the major changes:

1. Proceedings for suspending or removing officers or directors or other personnel of associations or banks were limited to those cases involving personal dishonesty.

2. Federal agencies are required to notify State supervisory authorities in cases involving State-chartered institutions and give them an opportunity to take corrective action within an appropriate time to be specified by the Federal agency.

As introduced, the bill would have required such notice to State authorities in any action under the bill involving a State-chartered institution. It would have required FSLIC, to the extent compatible with public interest, to consult with State authorities and proceed with due regard for whatever power and intent the State may have to effect necessary corrective action.

As passed by the Senate, notice to State authorities is to be given in cease and desist order proceedings and suspension and removal proceedings (except where suspension or removal is due to being charged with felonious dishonesty or breach of trust). FSLIC is to provide notice of its intent to proceed and specify the grounds. It is to designate an appropriate time within which the State is to effect corrective action. In the absence of such action, FSLIC may proceed to act. No institution or person who is the subject of a notice or order may attack its validity by raising the requirements of these provisions for notifying State authorities.

3. Existing statutory provisions permit removal of bank officers by the Federal Reserve Board upon certification of facts justifying removal made by the Comptroller of the Currency in the case of national and District of Columbia banks and by a Federal Reserve agent in the case of State member banks in the Federal Reserve System.

As introduced, the bill would have repealed those provisions and substitute a suspension and removal procedure after administrative hearings under the Administrative Procedure Act. Under the bill as introduced, this power would have been vested in the Comptroller of the Currency as to national and D.C. banks, the Federal Reserve Board as to State member banks of the Federal Reserve System, and FDIC as to State banks not members of the Federal Reserve System but having deposits insured by FDIC.

As passed by the Senate, a Committee amendment required the Comptroller of the Currency to certify to the Federal Reserve Board the facts warranting giving notice of intention to remove. It then permitted the Comptroller of the Currency to take part in Federal Reserve Board deliberations as to suspension or removal of a director or officer of a national or D.C. bank. As in the case of other banks, removal could be effected only after administrative hearings.

Other changes deemed less important are as follows:

4. As introduced, one ground for a cease and desist proceeding would have been that an association is about to violate a law, rule, regulation, charter, condition or agreement, or is about to engage in an unsafe or unsound practice.

As passed, the bill requires that the Board have reasonable cause to believe that violation or practice is about to occur. It also limited a "condition" or "agreement" as a ground to those in written form.

5. As introduced, a hearing could not begin until 30 days after notice. As passed, the Board may set an earlier date by request of the association in cease and desist proceedings or by the person involved upon a showing of good cause, or the Attorney General in removal proceedings.

6. As introduced, a temporary cease and desist order could be issued if the alleged violation or practice "could" cause insolvency or seriously prejudice savers. As passed, the words "is likely to" were substituted for "could".

7. As introduced, the Board would be required to issue an order of cease and desist or removal if it found grounds to do so in a hearing. As passed, the Board "may" issue such orders.

8. As introduced, the Board was required to issue an order barring from association service a person convicted of felonious dishonesty or breach of trust. As passed, the Board "may" issue such an order and may consent to let such a person serve an association.

9. As introduced, hearings were to be private unless otherwise ordered by the Board for good cause. As passed, the hearing is to be private unless the Board and the other party agree to a public hearing.

10. As introduced, the Board could apply to Federal district court for enforcement of an order. As passed, it may likewise apply for enforcement of a notice.

11. As introduced, the bill had no provision authorizing a court to allow reasonable expenses and attorneys' fees to an association or officer, or director, payable from association assets. As passed, the bill included such a provision.

12. As introduced, the bill had no provision preserving 12 U.S. Code 1829 that prohibits one convicted of a crime involving dishonesty or breach of trust from serving an insured bank except with written consent of FDIC, and making the bank liable to a fine for violation. As passed, the bill expressly preserved those provisions.

EXHIBIT B

COMPARISON OF H.R. 17703 WITH S. 3158 AS THE LATTER BILL PASSED THE SENATE ON AUGUST 22, 1966

H.R. 17703 is the less inclusive of these two bills. Briefly, it provides cease and desist order procedure for the Federal Home Loan Bank Board as to Federal savings and loan associations, FSLIC-insured associations, and FDIC-insured banks; and modifies grounds and procedure for appointing conservators and receivers of Federal associations.

S. 3158 includes such cease and desist order procedure and different provisions as to conservators and receivers. It expands the cease and desist procedure by authorizing issuance of temporary cease and desist orders where the alleged violation is likely to cause insolvency, substantial dissipation of assets or earnings, or serious prejudice to savers. It also contains other grants of power to the regulatory agencies. It empowers them to suspend and remove officers and directors and other personnel of a financial institution in cases involving personal dishonesty. This power extends to cases where the person, in the Board's opinion, has shown personal dishonesty and unfitness for service by incurring substantial loss in any business venture. Suspension may extend to anyone charged with felonious dishonesty or breach of trust in an information, indictment or complaint authorized by a U.S. Attorney. He may be removed on final conviction. If all directors of an association are suspended, the Federal Home Loan Bank Board may appoint temporary directors.

It provides criminal penalties for anyone suspended or removed from service who takes part in the association's affairs or solicits or votes proxies or without Federal Home Loan Bank Board approval votes for a director or serves as director, officer or employee of any FSLIC-insured association.

It also provides a fine against an association using the services of a person convicted of dishonesty or breach of trust, except with Board consent.

Termination of FSLIC-insured status automatically ends Federal Home Loan Bank System membership of an association and vice versa.

Change in control of an insured association through transfer of stock or rights to vote is to be reported by FSLIC by the chief executive officer of the association. He is also to report a loan by an insured association (or FDIC-insured bank) secured by 25 per cent or more of the voting stock of an insured institution, unless the borrower owned the stock one year or more or unless it is stock of a newly organized association before it opens. Specified information is required

in such reports. Thereafter the association is to report a change in its chief executive or any director in the next 12 months.

FSLIC may require current or former management personnel of any insured association and the association itself to provide such reports and disclosures as FSLIC determines appropriate to protect investors or FSLIC. FSLIC may prescribe civil penalties for noncompliance.

Federal examiners are empowered to examine affairs of all affiliates of insured associations or banks at the expense of the association or bank.

The foregoing summarizes the areas of activity the Federal agencies would be given under S. 3158. Some more particular differences between H.R. 17703 and S. 3158 should be noted, as follows:

1. S. 3158 exempts the Federal Home Loan Bank Board from suits for money damages. H.R. 17703 does not, thus preserving the present provision of section 5(d) (1) of the Home Owners' Loan Act of 1933.

2. S. 3158 permits suit against the Board by a Federal association or its officers or directors. H.R. 17703 extends the privilege to any aggrieved person.

3. S. 3158 specifies the following as grounds for commencing cease and desist order proceedings (1) past, present or reasonable expectation of future violation of law, rule, regulation, charter or other written condition or written agreement with the Board, (2) past, present or reasonable expectation of future unsafe or unsound practice. H.R. 17703 specifies more limited grounds of present or past violation within 2 years of a law or regulation.

4. S. 3158 requires the administrative hearing to be private unless a public hearing is agreed to by the Board and the other party. H.R. 17703 provides for a private hearing and a sealed record unless the private party requests a public hearing.

5. Under S. 3158 the earliest access to the court is within 10 days after a temporary cease and desist order is issued. Under H.R. 17703 an aggrieved party can apply to court for an interlocutory injunction against Board action after service of a notice of cease and desist charges, but must show that irreparable damages would otherwise ensue.

6. Under S. 3158, appeal from a final cease and desist order may be made to a Federal Court of Appeals, which is to review it under the Administrative Procedure Act. This means the agency's order must be upheld if supported by substantial evidence. Under H.R. 17703 the appeal goes to a Federal district court, and court review is on the weight of the evidence, a more stringent test.

7. Under S. 3158, a reviewing court passes only on law, not fact. Under H.R. 17703 the court in its discretion may take evidence itself and conduct a trial of facts and law if circumstances warrant.

8. Under S. 3158, the court is bound by the agency's decision if the decision is supported by substantial evidence, even though the court itself might have reached a different decision on the law under the facts of the case. Under H.R. 17703 the court is not bound by the agency's decision.

9. Under S. 3158, presumably all administrative remedies must be exhausted before recourse may be had to the courts. Under H.R. 17703 this is not required.

10. Under S. 3158, no specific areas are excluded from operation of a cease and desist order. Under H.R. 17703, such an order excludes limits on dividends on savings or interest on loans, appointment or removal of association personnel, assumption of managerial functions, and assumption of prerogatives of stockholders and shareholders of an association.

11. Grounds for appointing a conservator or receiver under S. 3158 include (i) insolvency, (ii) substantial dissipation of assets or earnings due to violation of law, rule, or regulation or due to unsafe or unsound practice, (iii) unsafe or unsound condition to do business, (iv) willful violation of a final cease and desist order and (v) concealment of books, papers or records. Grounds for similar action under H.R. 17703 are (i) insolvency, (ii) willful and substantial dissipation of assets or earnings due to violation of law or regulation, (iii) willful and substantial violation of a final cease and desist order, and (iv) concealment of books, papers or records.

12. S. 3158 permits a conservator or receiver to be appointed by the Board ex parte and without notice and allows the association to appeal to the Federal district court for removal. H.R. 17703 requires the Board to obtain a Federal district court order to appoint a conservator or receiver, and in an emergency the court may issue its order ex parte and without notice and the association may appeal to the court for removal.

13. S. 3158 does not require the Board to use cease and desist order procedure before resorting to appointment of a conservator or receiver. H.R. 17703 requires that the court permit appointment of a conservator or receiver only if in its opinion a cease and desist order would not effectively protect the public, savers and FSLIC.

14. S. 3158 prohibits any court from removing a conservator or receiver or affecting his powers except under the specific procedure permitted in the bill. H.R. 17703 contains no such restraint on the judiciary.

15. S. 3158 contains no provision like that in H.R. 17703 which makes appointment of a receiver an event of default under the FSLIC law, thus enabling FSLIC to pay out insurance proceeds.

16. S. 3158 restrains courts from affecting issuance or enforcement of any cease and desist or suspension or removal notice or order except to grant a stay as permitted by the specific appeal allowed to court under this bill. H.R. 17703 contains no such restraint.

17. S. 3158 provides that if an action is begun to remove a conservator or receiver, pending actions in any court under this subsection (d) must be stayed. H.R. 17703 contains no such restraint on courts.

18. S. 3158 bars persons convicted of a crime involving dishonesty or breach of trust from serving as director, officer or employee of an association, except with Board consent. H.R. 17703 applies the same rule to service as an officer or employee of the Board, but limits the ground to conviction within the past 5 years as to service for associations or the Board.

19. S. 3158 makes no express requirement for use of cease and desist order proceedings before commencing proceeding to terminate insurance of FSLIC-insured associations. H.R. 17703 requires use of cease and desist order procedures first, if applicable.

20. While S. 3158 contains no provisions on the subject, H.R. 17703 expressly authorizes incumbent personnel or members of associations to contest cease and desist order proceedings or termination of insurance proceedings.

21. In the case of State-chartered institutions, S. 3158 provides that the Board notify State authorities in cases involving cease and desist order or suspension or removal proceedings (but not suspension or removal due to being charged with a felony). The Board is to state its intent to proceed against an association or person and state the grounds. It sets a time within which it asks the State authority to take corrective action. If no such action is taken within that time, the Board may act on its own. No private person can challenge the validity of any notice or order because these requirements are not satisfied.

H.R. 17703 requires like notice to State authorities in all cases under section 407 of the National Housing Act and under section 8 of the Federal Deposit Insurance Act. A time for corrective action is specified, but if such action is not taken then, the Federal agency may transfer the controversy to a Federal district court for settlement.

22. While S. 3158 has no similar provision, H.R. 17703 prohibits appointment of a bank conservator or receiver unless in the Federal bank regulatory agency's opinion on a cease and desist order would not effectively protect the public, depositors or the agency.

In conclusion, it should be observed that while H.R. 17703 is much more restricted in scope than S. 3158, it would provide the regulatory agencies with cease and desist order procedure under recourse to judicial review that is both timely and adequate. The judicial review permitted by S. 3158 is quite restrictive and much more limited than under present Federal law applicable to savings and loan associations. H.R. 17703 contains no suspension or removal provisions as to association personnel, leaving to the usual law enforcement channels the punishment of criminal behavior on the part of any association personnel, and to boards of directors, stockholders and members of associations the removal of inept personnel. As to banks the present statutory provisions for removal of officers and directors would remain in effect.

Mr. COURSHON. Inasmuch as time is short, and yet the questions are so broad, and the power asked is so massive, I would like not to deal in specific language of bills, but to deal with the broad question that is before you this morning.

First, we have to ask ourselves: Why are we here this morning? Why is this before us?

The history of the supervisory process of the savings and loan associations, as it affects the Congress, really begins in 1933, because it was at that time, as you will recall, that there was created the Federal Savings and Loan Insurance Corporation, and it was at that time that the Federal Government became involved as an underwriter to a certain extent through the Insurance Corporation of losses in the savings and loan field, whether they were organized as Federal savings and loan associations, or whether they were State-chartered, and therefore State-supervised savings and loan associations. Thus we are dealing with several questions—the questions of how much power an insurance underwriter should have to prevent loss, whether the entity that is being underwritten is a federally chartered entity, or is a State chartered entity. This is one question. Two, whether these associations that are supervised should be so supervised that supervision becomes management. Three, whether the urgency of preventing loss to the underwriter should be such that the basic rights of the owners of these associations, whether they be shareholders in mutuals, stockholders in stock, officers or directors, should be completely subservient to the desire of the underwriter who is also the supervisor in the case of Federals.

Under the existing law, as it now is written, we have two sections of the Federal law involved which are 5(d)(1) and 5(d)(2).

5(d)(1) provides for show cause orders, it provides for administrative hearings under the Administrative Procedure Act, and was brought about in 1954 as an alternate to the weapon of takeover. At that time, one of the persons testifying in support of the present law was the then Chairman of the Federal Home Loan Bank Board, Mr. Walter McAllister, who happens to be now the mayor, I think, of San Antonio, Tex.

One of the things he said at that time was that he needed these administrative procedures, so that as a practical matter he didn't have to take over a solvent institution, and further to protect the shareholders from arbitrary and capricious actions on the part of the supervisor.

Now, those are his words.

Chairman McMurray, appointed in 1961, first initiated a further review as to whether or not there were adequate supervisory tools in the hands of the Federal Home Loan Bank Board and whether the Insurance Corporation itself had adequate protection if the State supervisors failed to do the job of properly supervising the State-chartered institutions. He stated that 5(d)(1) that had been passed in 1954 was a tap on the wrist, and that 5(d)(2) was an atom bomb, which was the takeover, and that what he needed was an intermediate tool which he called the cease and desist, and he called that the shotgun.

At that time he had an unofficial group known as the task force. I had the honor to serve on that task force, and was asked to do an analysis. I did in July of 1961. I recommended at that time that the shotgun was needed, and that there should be an intermediate tool, because the history of the Federal savings and loan supervisory functions, after 1954, was that given the choice between using 5(d)(1) which can take a lot of time and which might be embroiled in long litigation, or taking 5(d)(2) or threatening to take it, the Board being

made up of human beings, took the stronger weapon, and always used 5(d)(2) or threatened to use it, except in possibly one case. And so therefore Chairman McMurray suggested that we need this third choice.

As Congressman Pepper pointed out, he was the first, to my knowledge, joined by the chairman of this committee, as well as other members of this committee, to recognize this problem, to be sympathetic to it, and to put in bills that provided the alternate weapon, the alternate tool, which was the cease and desist.

I submit to you, however, that S. 3158 is a Trojan horse bill, because S. 3158, about which we are all talking about, cease and desist, an alternate weapon, is not the only weapon. S. 3158 provides for a new 5(d)(2) which is the atom bomb, only it refines it and makes it a hydrogen bomb. Why?

Under the present 5(d)(2) there are several provisions. One, if there is an emergency, and the language of the bill uses the word "emergency," and the Board so finds, it may ex parte, and without notice, walk into a shop and put in what is known as a supervisory representative in charge. The new bill that is submitted by the Board eliminates this.

The new bill does not require under 5(d)(2) any finding of emergency on the part of the Board and therefore I can sit there and on Monday morning, after testifying this week, I could be advised that a conservator has been appointed for our association, without notice, and without service of charges, and that conservator will sit and will take over that institution.

Furthermore, the shareholder, if it was a stock company, could not be represented or vote their stock. The shareholders as a mutual can have no voice. For the first time in regulatory agency history the owners of that institution are divested from the right to be heard at any future time, because the indicia of ownership moves to the supervisor. Why? Because the underwriter wants to prevent loss.

So I maintain this bill is not just a cease-and-desist bill that gives an intermediate tool. This bill destroys 5(d)(2) as it now is in the present law and brings about a stronger takeover.

I submit that the past history of the Board, being that when given a choice of using an intermediate weapon or an ultimate weapon, the Board has always used the ultimate weapon. And the Trojan horse known as S. 3158 now creates a stronger ultimate weapon.

The judicial review procedures that are in S. 3158 are a new departure. Under the present law, if there is no change, the management and ownership of savings and loans, be it mutual or stock, have the right to the weight of the evidence rules, and have the right to sue and be sued. These rights, under S. 3158, are severely restricted and very narrowed. Therefore if you were operating a savings and loan association, or a shareholder in a mutual institution, or a stockholder in a stock institution, under S. 3158, you no longer would have the rights in court that you have under present law, and you would not have the right to have questions of fact determined by the courts, because the substantial evidence rule would be followed. It is not an adequate review if the only review you can have is to go to the court of appeals. It looks good on paper, but it is not effectual review. It

becomes in fact a meaningless expression of terms to placate the people in the savings and loan industry.

Now I wish to address myself to another issue, and that is the question of the dual system.

Up to now the Federal Government, as the underwriter, through the Federal Savings and Loan Insurance Corporation, has a choice. One—when a State-chartered institution asks for insurance, it has the choice of denying it. And where the State-chartered institution does not comply with the requirements of the Insurance Corporation, they may terminate the insurance. Now, as the underwriter what is suggested under S. 3158 is that if the State supervisor does not supervise in the fashion the insurance underwriter wants, then the supervision of the State-chartered institution moves to the insurance underwriter. The Pepper bill gives the opportunity for the courts to determine if there is an honest difference of opinion between the insurance underwriter and the State supervisor who shall prevail.

Since my time is running out, I wish to conclude by saying this:

There is no responsible savings and loan person in the operational side of the savings and loan business today that seriously contests the fact that there should be an intermediate power granted to the Federal Home Loan Bank Board, that power to be cease and desist.

S. 3158, that is before you so rapidly, needs a lot of study. S. 3158 does not just give the intermediate tool. S. 3158 refines the ultimate weapon, and with the cease-and-desist power does not give adequate judicial review.

S. 3158 destroys the right of the State supervisors to continue to supervise if in effect the Federal Savings and Loan Insurance Corporation determines that it is not satisfied with the manner and method of that supervision.

Thank you very much.

The CHAIRMAN. Thank you, sir. And you may, in addition to inserting your own statement, make additional comments for the record when you examine your transcript.

Mr. COURSHON. Thank you for your courtesy, Mr. Chairman.

Mr. WIDNALL. Mr. Chairman—as I came in right after the meeting began today, I would like to understand the way you are proceeding. How much time has been given each person?

The CHAIRMAN. Each witness has 10 minutes, and then we will interrogate the witnesses.

Mr. WIDNALL. Was it your purpose to wind up the hearings with respect to all witnesses here by noon today?

The CHAIRMAN. Yes, sir—if we get through with these witnesses. If we do not, we will ask them to return.

Mr. WIDNALL. I would certainly hope—this is extremely important legislation that does involve the life and death of a lot of savings and loan associations—that there be no attempt to cut down on time. I think it is far too important.

The CHAIRMAN. I think you are right about it. It is not my purpose to cut down on time. I think it is reasonable to allow them 10 minutes to present their testimony, and then to permit the members of the committee to interrogate them, and probably bring out everything they want brought out anyway.

Now, if there is anything that is not brought out, if they will just speak up, they will be given time to bring it out. Will that be satisfactory?

Mr. WIDNALL. Mr. Chairman, it probably will work out all right. But I notice with the two witnesses we have had already, who have been speaking extemporaneously and not using prepared statements, before they were through with their testimony—that the time limit was enforced. And the continuity of their statement will be interfered with if we do cut in on them.

Mr. CLAWSON. Along this line—is there any plan for an executive session today?

The CHAIRMAN. No executive session today; no, sir.

Let us have this understanding, Mr. Widnall. I am in accord with what you say. This is a very important matter to the savings and loans, and they must be given an opportunity, a fair opportunity. And if at the end they do not feel like they have had sufficient time, if they will speak up, we will make sure that they be given sufficient time, even if it is an additional hearing, or an additional day for testimony. Is that satisfactory?

Mr. CLAWSON. My question was about Mr. Horne.

The CHAIRMAN. Not today.

Mr. WIDNALL. Mr. Chairman, I don't think there is much difficulty with seeing the need for cease-and-desist legislation. But certainly in spelling it out, we have got to be extremely careful of what we do, and I am particularly bothered about the language in the Senate bill which reads "reasonable cause to believe the association is about to violate a law." I think that is a very dangerous approach. And certainly in all areas somebody can say you are about to violate a law. There may not be any substance to it—but a lot of harm is done if they can step in without authority.

The CHAIRMAN. I would like to ask the distinguished gentleman from New Jersey, Mr. Widnall, the ranking minority member, to keep the chairman advised about what things should be done in the way of giving an extension of time. And I am reasonably certain that the requests that you make will be agreed to.

Mr. WIDNALL. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Bliss.

STATEMENT OF GEORGE L. BLISS, PRESIDENT, COUNCIL OF MUTUAL SAVINGS INSTITUTIONS, NEW YORK, N.Y.

Mr. BLISS. Mr. Chairman and members of the committee, my name is George L. Bliss. I reside in Mount Vernon, N.Y., and I appear as president of the Council of Mutual Savings Institutions.

We wish to propose two sets of amendments to the bill, which we regard as essential.

The CHAIRMAN. Speak into the microphone, please.

Mr. BLISS. Yes, sir. My statement is brief.

The first relates to lines 6 through 11 on page 42 of the bill.

Mr. REES. Mr. Chairman, could the witness stipulate which bill—the Senate bill or the House bill?

Mr. BLISS. Yes. I am discussing S. 3158.

Mr. REES. Thank you.

Mr. BLISS. Subsection (1) which begins on page 39, follows the pattern of the statute which requires banks to report to designated Federal authorities a change in control of outstanding voting stock. Paragraph 1 would require the president or the chief executive officer of an institution in which accounts are insured by the Federal Savings and Loan Insurance Corporation to report to the Corporation any change in the outstanding voting stock of any insured institution which will result in control or a change in the control upon obtaining knowledge of such change?

Now, paragraph 6, which is on page 42, properly defines stock to mean stock or other equity securities or equity interests or rights, interests or powers with respect thereto.

In a mutual savings institution, however, there can be no stock or equity securities or equity interests. The standard charter and prescribed bylaws for Federal savings and loan associations provide, for example, that all holders of savings accounts, and all borrowers are members, that each such association shall be under the direction of a board of directors, each of whom must be a member, that the directors shall be elected at an annual meeting of the members, that each account holder shall have 1 vote for each \$100, or fraction thereof, in his savings account, that each borrower shall have 1 vote in addition, that no member may cast more than 50 votes, that directors shall be elected for 3-year terms, and that the terms of approximately one-third shall expire annually. The statutes of the 50 States contain similar provisions, with only minor variations.

Now, of the approximately 4,500 institutions in which accounts are so insured, about 2,000 are Federal savings and loan associations, all of which are mutual, about 1,800 are State-chartered mutual savings, building or homestead associations, or cooperative banks, and the remaining 700, all of them State chartered, are capital stock corporations, with control vested in the owners of such stock.

The statute requiring banks to report a change in control applies only to capitalized banks, and the proposed subsection (1) should apply only to capital stock corporations.

We do not accept the assertion occasionally made that "control" can be exercised in a mutual institution by the use of "permanent" proxies. In the first place, it is basic law that any proxy is revocable or may be superseded by a proxy bearing a later date and, in most States they are valid only for a specific period of time, in any event. Neither can "control" be exercised by any director or group of directors in a mutual institution since, as distinguished from a capital stock corporation, each director is responsible only to himself; he is a free agent and cannot be held to or bound by any program or set of policies.

Accordingly we urge that lines 6 through 11 on page 42, paragraph (6), be revised by the deletion at line 9 of the phrase which begins "regardless of whether such institution is a stock company, a mutual institution, or otherwise."

Our second point is illustrated at page 2 of the bill—I am talking again of S. 3158, lines 21 through 25.

Our presentation relates to cease-and-desist orders.

Now, we raise no objection to granting authority for the issuance of cease-and-desist orders or the removal of directors or officers for

violation of any law relating to the operation of these institutions. We hold, however, that these penalties are unreasonably severe for alleged violations of "rules and regulations," because of the manner in which regulations may be promulgated; or of a "condition imposed in writing," whatever that may mean.

The 2,000 Federal savings and loan associations that would be affected by these instances are subject to the "Rules and regulations for the Federal Savings and Loan System"; and these 2,000 and 2,500 State-chartered institutions in which accounts are insured by the FSLIC are subject to the "Rules and regulations for insurance of accounts."

In both cases, proposed regulations, or changes therein, are published in the Federal Register, customarily on a 30-day notice basis, and occasionally on a 15-day notice basis. Such publication does not constitute "actual notice"; institutions that would be affected must rely on the public press, or on membership in a trade association to inform them, or subscribe to reporting services, save in the occasional instances where "actual notice" is provided by mail. Moreover, hearings on proposed regulations are at the discretion of the Board. Action on proposed regulations is, likewise, reported by publication in the Federal Register and, again, save in the occasional instances where "actual notice" is provided by mail, affected institutions must rely on one of the three sources above listed for information. Finally, regulations may be adopted without prior notice, if the Board deems prior notice to be unnecessary or that circumstances do not warrant.

While we recognize that, in the complexities of modern life, most statutes authorize the issuance of rules and regulations having the effect of law, we submit that it is unreasonable for affected institutions to be confronted with the possibility of cease-and-desist orders while they may be challenging the validity of regulations issued under the circumstances described, with the only remedy to go to the expense and trouble of a court review.

As an alternative, we submit that where a subject matter is deemed by the regulatory authority to be of such importance to warrant being subject to the issuance of cease-and-desist orders, it should propose statutory amendments, whereupon affected institutions would have the protection of adequate notice, of hearings before congressional committees having jurisdiction, of votes by the Senate and the House of Representatives and approval by the President.

We submit, Mr. Chairman, five specific proposals on the third page of my prepared statement—five specific instances where amendments to implement that recommendation could be effected.

(The specific amendments proposed by Mr. Bliss follow:)

AMENDMENTS PROPOSED BY GEORGE L. BLISS, PRESIDENT, COUNCIL OF MUTUAL SAVINGS INSTITUTIONS

- I. THE REFERENCE TO A "MUTUAL INSTITUTION" IN PARAGRAPH (6) OF SUBSECTION (1), WHICH IS CAPTIONED "REPORTING REQUIREMENTS," IS NOT APPROPRIATE TO THE FACTS AND SHOULD BE DELETED

Recommendation: That Lines 6 through 11 on Page 42 be revised to read as follows:

"(6) As used in this subsection, the term 'stock' means such stock or other equity securities or equity interests in an insured institution, or rights, interests,

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or powers with respect thereto [, regardless of whether such institution is a stock company, a mutual institution, or otherwise], as the Corporation may by regulation define for the purposes of this subsection."

II. THE FIVE INSTANCES IN THE BILL WHICH AUTHORIZE THE ISSUANCE OF CEASE-AND-DESIST ORDERS OR THE REMOVAL OF A DIRECTOR OR OFFICER FOR VIOLATION OF A "RULE," OR "REGULATION," OR A "CONDITION IMPOSED IN WRITING," ETC., SHOULD BE DELETED

Recommendation: That Lines 21 through 25 on Page 2 be revised to read as follows:

"(2) (A) If, in the opinion of the Board, an association is violating or has violated, or the Board has reasonable cause to believe that the association is about to violate, a law [, rule, regulation,] or *its* charter[or other condition imposed in writing by the Board] or written agreement entered into"

Recommendation: That Lines 1 through 3 on Page 6 be revised to read as follows:

"(4) (A) Whenever, in the opinion of the Board, any director or officer of an association has committed any violation of law [, rule, or regulation,] or of a cease-and desist order"

Recommendation: That Lines 24 and 25 on Page 22, and Lines 1 through 7 on Page 23 be revised to read as follows:

"(b) INVOLUNTARY TERMINATION OF INSURANCE: NOTICE AND HEARING.—(1) Whenever, in the opinion of the Corporation, any insured institution [has violated its duty as such or] is engaging or has engaged in an unsafe or unsound practice in conducting the business of such institution, or is in an unsafe or unsound condition to continue operations [as an insured institution], or is violating or has violated an applicable law [, rule, regulation, or order, or any condition imposed in writing by the Corporation] or any written agree-"

Recommendation: That Lines 19 through 25 on Page 26, and Lines 1 through 3 on Page 27 be revised to read as follows:

"(e) CEASE-AND-DESIST PROCEEDINGS.—(1) If, in the opinion of the Corporation, any insured institution or any institution any of the accounts of which are insured is engaging or has engaged, or the Corporation has reasonable cause to believe that the institution is about to engage, in an unsafe or unsound practice in conducting the business of such institution, or is violating or has violated, or the Corporation has reasonable cause to believe that the institution is about to violate, a law [, rule, or regulation, or any condition imposed in writing by the Corporation] or written agreement entered"

Recommendation: That Lines 3 through 6 on Page 30 be revised to read as follows:

"(g) SUSPENSION OR REMOVAL OF DIRECTOR OR OFFICER.—(1) Whenever, in the opinion of the Corporation, any director or officer of an insured institution has committed any violation of law [, rule, or regulation,] or of a cease-and-"

The CHAIRMAN. Thank you, sir.

Our next witness is Mr. Norman Strunk.

STATEMENT OF NORMAN STRUNK, EXECUTIVE VICE PRESIDENT OF THE UNITED STATES SAVINGS & LOAN LEAGUE

Mr. STRUNK. Thank you, Mr. Chairman.

As you know, I represent the U.S. Savings & Loan League. I would like to summarize our position on S. 3158. I have three double-spaced pages here. And then I would submit a more detailed statement for the record with respect to more technical amendments.

The CHAIRMAN. They may be inserted.

Mr. STRUNK. At the outset, I would like to make it crystal clear that the U.S. Savings & Loan League endorses S. 3158 with some amendments and believes that Federal authorities should have ef-

fective procedures for enforcing supervisory orders. This, of course, is in the public interest, but it is also in the best interest of the thousands of honestly and competently managed savings institutions. They, along with the investing public, are the ones who suffer from the acts of the handful of incompetent and dishonest men who inevitably appear in major industries such as ours.

We support the statement of the Federal Home Loan Bank Board that effective new intermediate powers are needed. The Federal Home Loan Bank Board must be able to deal with supervisory problems which are too serious to be handled by talking but not serious enough to justify seizure or termination of insurance of accounts.

We are submitting for committee consideration several amendments which we believe will improve this bill without detracting from its basic purpose. We think that some of these amendments will be accepted by the Federal agencies. Others will coincide with the committee's own concern over the need for safeguards and clarification in connection with these major new powers. And I want to discuss only one of them, and it deals with this matter of the adequacy of court review.

We believe that the committee will agree that the courts in reviewing supervisory action should use the rule of "weight of the evidence" as against the substantial evidence rule. As the bill is drafted, the courts in reviewing the actions of the administrative agencies, under the language of the Senate bill, must determine only that there was "substantial evidence." There is a big difference. If an association loans a million dollars on a property that later sells for \$900,000, that is "substantial evidence" of an unsound practice. But if the court looks at the "weight of the evidence" and determines that similar properties had sold for over a million dollars and that the decline in sales price was due to deactivation of a military base, then the loan is obviously not an unsound practice. The present law calls for the "weight of the evidence" and we believe it should be continued.

We believe there is a similar merit in our other recommended amendments. But I will not take the committee's time to go into them. They are quite technical. We have a full explanation which we are submitting.

I have one substantive amendment I would like to submit and that is to propose an increase in the insurance of accounts ceiling for banks and savings and loan associations from \$10,000 to \$20,000.

You will recall that during the House debate on the interest rate bill, Representative Hanna offered this amendment. He pointed out that this increase could be granted without cost to the Government and would be "an expression of the confidence that we have in these institutions." He said, "We should be assuring the people of America that deposition money in any of these institutions is in the interest of our public policy."

The amendment failed because of a point of order, but we would urge that it could be very appropriately added to this bill. It would help allay the concern some savers feel as a result of isolated instances of failures of banks and savings and loans. The experience when the ceiling was raised from \$5,000 to \$10,000 15 years ago shows that an increased ceiling does produce net new savings and it does not change the loss claims against the Corporation. Because of a prepaid pre-

mium arrangement, the reserve ratio of the Federal Savings and Loan Insurance Corporation has more than doubled in the last 5 years and is at the highest point in history, and the Insurance Corporation now boasts a strong financial statement.

People are very conscious of the insurance ceiling and over and over we see cases where the saver will put \$10,000 in the savings and loan and then put another, \$5,000 or \$10,000 in Government or corporate bonds.

A proposal to increase the insurance ceiling in 1964 was approved by this committee but was defeated on the House floor. It had been endorsed by the FDIC and the Federal Home Loan Bank Board, but two basic objections were raised by Members who opposed the measure. They cited the fact that the administration's proposal had included dividend control but the then pending bill contained no such control. Of course, dividend control legislation has now been passed in the form requested by the administration. Thus, that objection is no longer pertinent.

The second objection 2 years ago was that the insurance ceiling bill did not contain any strengthening of supervisory powers as recommended by the administration. Of course, with the enactment of the pending measure, the Federal Home Loan Bank Board will have effective new supervisory powers. Thus, that argument, too, has been overcome.

Approximately 2 million of our savers have accounts at \$10,000. Most institutional investors are prohibited from exceeding the insurance limit and many individual savers do so as a matter of personal preference. If even a fraction of these investors would add \$5,000 or \$10,000 to their accounts as a result of a higher insurance ceiling, several billion dollars would be immediately added to our savings and available for home loans. The increase from \$5,000 to \$10,000 in 1950 produced an instant savings increase, and we are certain that an increase from \$10,000 to \$20,000 would again produce an instant savings increase in our institutions, which is so greatly needed.

Actually, the increase to \$20,000 is merely "keeping up with the times." When the insurance ceiling was set at \$10,000, the gross national product was \$285 billion, and at the end of 1965 it had more than doubled to \$681 billion. The rate of annual personal savings has more than doubled from \$12.7 billion to \$25.7 billion. The total savings in insured savings and loan associations has increased 600 percent during this period.

For months this committee has been seeking a way to revive the ailing housing market. We are convinced that this simple action of increasing the insurance of accounts ceiling will do more to help the housing market than any other legislation enacted or contemplated. We hope you will give us a chance to prove that point.

(The attachments to Mr. Strunk's statement follow :)

AMENDMENTS OF S. 3158 PROPOSED BY THE U.S. SAVINGS & LOAN LEAGUE

Amendment (1).

Page 5, line 6. Strike the words "Within ten days" and substitute the words "At any time".

Page 5, line 7. Insert following the comma after the word "order" the clause "and prior to a service upon such association of a final order pursuant to subsection (7) (A) hereof,".

Page 5, line 16. Add after the word "court" the following clause: ", upon finding that substantial prejudice would otherwise result,".

Amendment (2)

Page 6, line 1. Insert following the comma after the word "Board" the designation "(1)".

Page 6, line 8. Insert after the word "and" the designation "(2)".

Page 6, line 13. Insert after the word "and" the designation "(3)".

Amendment (3).

Page 6, line 17. Insert following the period after the word "office" a new sentence to read: "Such service must be made within three years from the date upon which the violation, practice, act or omission upon which the action of the Board is based becomes known to the Board."

Amendment (4).

Page 9, line 24. Strike the comma at the end of the line.

Page 10, lines 1 and 2. Strike line 1 and the word "Attorney" and the comma in line 2 and substitute the words "or indictment".

Amendment (5).

Page 13, line 21. Change the period after the word "Board" (where such word first occurs in that sentence) to a comma and add after such comma the following: "except that such vesting of power in a conservator or receiver shall not affect the rights of the members, or the officers or directors in office at the time of such appointment, to initiate or pursue the right to contest such appointment, or otherwise to undertake court proceedings authorized under this section."

Amendment (6).

Page 16, line 7. Strike the period after the word "Act" and substitute ", except that such review shall be upon the weight of the evidence."

Amendment (7).

Page 20. Insert following line 25 a new subparagraph (3) reading: "The term 'personal dishonesty' shall mean actions or conduct from which an individual properly chargeable therewith has derived or reasonably could be expected to derive a substantial personal advantage, and which are of such nature and scope as would afford grounds for the indictment of such individual under the United States Criminal Code or the criminal laws of any state having jurisdiction."

Amendment (8).

Page 29, line 7. Strike the words "Within ten days" and substitute the words "At any time".

Page 29, line 8. Insert following the comma after the word "order" the clause "and prior to a service upon such association of a final order pursuant to subsection (j) (i) hereof,".

Page 29, line 17. Add after the word "court" the following clause: ", upon finding that substantial prejudice would otherwise result,".

Amendment (9).

Page 30, line 4. Insert following the comma after the word "Corporation" the designation "(1)".

Page 30, line 11. Insert after the word "and" the designation "(2)".

Page 30, line 16. Insert after the word "and" the designation "(3)".

Amendment (10).

Page 30, line 20. Insert following the period after the word "office" a new sentence to read: "Such service must be made within three years from the date upon which the violation, practice, act or omission upon which the action of the Board is based becomes known to the Board."

Amendment (11).

Page 34, lines 7 and 8. Strike the commas in line 7 and insert the word "or" before the word "indictment". Strike the phrasing "or complaint issued by a United States Attorney,".

Amendment (12).

Page 37, line 23. Strike the period after the word "Act" and substitute ", except that such review shall be upon the weight of the evidence."

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Amendment (13).

Page 42, lines 12 to 25. Strike subsection (m) entirely. Change subsections "(2)" and "(3)" on lines 1 and 15 on page 43 to read, respectively, "(1)" and "(2)".

Amendment (14).

Page 45, line 11. Insert the words "in writing" after the word "notice".

Amendment (15).

Page 47, following line 15. insert a new subparagraph (C) reading: "The term 'personal dishonesty' shall mean actions or conduct from which an individual properly chargeable therewith has derived or reasonably could be expected to derive a substantial personal advantage, and which are of such nature and scope as would afford grounds for the indictment of such individual under the United States Criminal Code or the criminal laws of any state having jurisdiction."

AMENDMENT OF S. 3158 TO INCREASE THE INSURANCE LIMIT ON FDIC AND FSLIC SAVINGS ACCOUNTS FROM \$10,000 TO \$20,000

Page 73, after line 5. Add the following new Title:

"TITLE III—PROVISIONS RELATING TO AN INCREASE IN THE STATUTORY LIMIT ON THE FEDERAL INSURANCE OF SAVINGS ACCOUNTS

"SEC. 1. The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended—

"(a) by striking out '\$10,000' in section 3(m) and inserting in lieu thereof '\$20,000';

"(b) by striking out '\$10,000' section 7(i) and inserting in lieu thereof '\$20,000';

"(c) by striking out '\$10,000' section 11(a) and 11(i) and inserting in lieu thereof '\$20,000', and

"(d) by striking out the proviso at the end of section 11(a) and inserting in lieu thereof: 'Provided, That in the case of a bank closing prior to September 21, 1950, the maximum amount of the insured deposit of any depositor shall be \$5,000, and in the case of a bank closing on or after September 21, 1950, and prior to the effective date of this amendment, the maximum amount of the insured deposit of any depositor shall be \$10,000.'

"Sec. 2. (a) Title IV of the National Housing Act (12 U.S.C. 1724 et seq.) is amended—

"(1) by striking out '\$10,000' each place it appears in section 401(b) and inserting in lieu thereof '\$20,000'; and

"(2) by striking out '\$10,000' in section 405(a) and inserting in lieu thereof '\$20,000'.

"(b) The amendments made by subsection (a) of this section shall not be applicable to any claim arising out of a default (as defined in section 401(d) of the National Housing Act) where the appointment of a conservator, receiver, or other legal custodian as set forth in said section 401(d) becomes effective prior to the effective date of this Act."

SUMMARY EXPLANATION OF AMENDMENTS TO S. 3158 ADVOCATED BY THE UNITED STATES SAVINGS AND LOAN LEAGUE IN TESTIMONY

(1) *Cease and desist orders.*—A temporary cease and desist order, by the terms of the bill, would have to be obeyed immediately by an institution upon which it is served. The institution would have ten days to seek relief in the local federal district court. If it allows that ten days to pass, it has lost its chance to get the order modified or suspended until the case reaches the point of post-hearing review. That may be a long time away. For that reason the 10-day limit should be deleted or modified. This would not interfere unduly with the supervisory purpose. However, if it is allowed to stand as it is, it would involve the likelihood that every cautious attorney for an institution upon which such an order is served will petition the federal court to have the order modified at least to provide against contingencies that may evolve if the point at which a final may eventuate becomes unduly delayed. If not deleted, the intervention of

the court might be allowed "in any case where substantial prejudice would otherwise result to the association." This change should equally be made with respect to the service of temporary cease and desist orders upon state chartered insured institutions as provided beginning on page 27 of the bill. (See Amendments 1 and 8, attached).

(2) *Removal of officers and directors.*—Some doubt has been expressed that the wording in the bill makes sufficiently clear that all of the three elements specified for a removal action must have occurred before such action can be taken, viz., a violation of a law or regulation must have occurred, substantial damage to the institution or serious prejudice to the interests of its savings account holders must have resulted, and personal dishonesty must have been involved. Any restyling necessary to remove this doubt should be made. (See Amendments 2 and 9 attached).

Further, it is noted that the important element of "personal dishonesty" is not in any way defined or further explained anywhere in the bill. Perhaps that is due to the fact this element was added only in the last version issued by the Senate Banking and Currency Committee. Whatever the reason, by all means such an important component of any removal proceedings should be defined. The definition should make clear that the term has reference only to "personal dishonesty" that is of such a nature that the individual charged with it would be subject to indictment under either the laws of the state or under the Federal law. (See proposed definition—Amendments 7 and 15 attached).

In fairness to the individuals that may be involved it seems appropriate to inject a "statute of limitation" into the ability of the Board to service a notice of intention to remove upon an individual officer or director. It seems reasonable to restrict the right of the agency to take action toward removal to those cases in which such action is started within three years after the discovery by the agency of the conduct upon which it would base the removal. This is equally true whether the person charged is the officer or director of a federal savings and loan association or of a state-chartered FSLIC-insured institution. (See Amendments 3 and 10 attached).

(3) *Appointment of a conservator.*—Such an official immediately becomes vested with all the powers of the officers and directors of the association he takes over. The bill provides for a court review of such a take-over, but it is not clear that the ousted officers and directors still would be "proper parties" to pursue such a petition for review. It is not intended that they should be deprived of such right. That being so, we think the point should be placed beyond question by expressly providing in the law itself that they shall have such right. (See Amendment 5, attached).

(4) *Suspension upon indictment.*—Proceeding to the suspension of an officer or director who is charged with a criminal action, it is urged that such suspension be limited to cases in which there has been an indictment or an information for a felony. Such suspension should not stem from a complaint authorized by a United States Attorney, as the bill provides. Moreover, the felony involving dishonesty or breach of trust upon which such a suspension may be made should be limited to one affecting the affairs of a financial institution. In weighing these added limitations, it should be borne in mind that an indictment or the filing of an information is not a conviction, and a suspension inevitably has a drastic effect on the individual concerned that can never be erased even if he is subsequently found to be innocent. (See Amendments 4 and 11, attached).

(5) *Examinations of affiliates.*—On page 42 of the bill subsection (m) provides that the examination routines of the Board's supervisory staff should be extended to the affairs of all the affiliates of such institutions. This provision has been included in the bill, it is understood, mainly because of the need for bank supervisors to gain access to the affairs of bank affiliates for examination purposes. There is a very small incidence of various affiliated organizations in the savings and loan business. To the extent that it may be pertinent, it should be provided for as part of the laws pertaining to savings and loan holding companies. It is, therefore, recommended that it be stricken from that part of the bill which applies to FSLIC insured institutions, the affiliates of which, if any, are the supervisory fuction of state appointed supervisors. (See Amendment 13 attached).

(6) *Notice to state supervisors.*—Another small but important change which should be made applies to that section of the bill which deals with consultation or notice to state authorities prior to taking a supervisory action against a state-chartered insured institution. It seems that at the very least the bill should

provide that in each case the required notice to the state supervisory authority should be in writing. (See Amendment 14, attached).

(7) *Weight of the evidence.*—The review of administrative orders by the United States Circuit Court of Appeals should be based on the “weight of the evidence”. This is doubly true in the case of the removal provisions, as regards either Federal savings and loan institutions or state savings and loan institutions. Attention is called to the fact that this phrasing is found in the present law.

Only by including it unchanged in the bill can the sweeping curtailments of the rights of private institutions found throughout the bill be counter-balanced. It may be justifiable elsewhere in the federal laws to limit the review functions of appellate courts by the “substantial evidence” rule. In this setting, however, it will be recalled that in a measure which vested less sweeping supervisory powers in the law this Committee in its wisdom originally put that “weight of the evidence” phrasing into this supervisory law. That dates back to 1954. No evidence that its being there these dozen years has proven prejudicial to the agency in any given situation has been brought forward.

Each of these changes outlined above have been cast into the form of technical amendments to the bill for the convenience of the Committee. They are attached.

The CHAIRMAN. Thank you, sir.

Next is Mr. Hollis Burt, executive vice president of the National Association of Supervisors of State Banks.

STATEMENT OF HOLLIS BURT, EXECUTIVE VICE PRESIDENT OF THE NATIONAL ASSOCIATION OF SUPERVISORS OF STATE BANKS

Mr. BURT. Thank you, Mr. Chairman, and members of the committee.

My name is Hollis W. Burt. I am executive vice president of the National Association of Supervisors of State Banks.

Your invitation to bring to this committee the association’s views on S. 3158 is appreciated. Mr. William E. Nuesse, commissioner of banks for Wisconsin and president of NASSB, has asked me to appear on behalf of the State bank supervisors and the 4,800 banks that are included in the association’s membership.

The cover letter attached to this bill when it was introduced in the Senate, over the signatures of the Secretary of the Treasury and the heads of the respective Federal financial agencies, said in part:

“Appropriate regulations are clearly required to protect the safety of savings of American families and to assure the most efficient and equitable regulation of financial institutions.”

Our association endorses that philosophy. We believe that Government—both State and Federal—should have strong and effective controls over banks and other financial institutions.

We do not believe that S. 3158 falls within the framework of “appropriate regulations.” There are many reasons, but let me point out what, in our judgment, are the major faults of this proposed legislation:

1. It does not strike at the heart of the problem.
2. It duplicates powers now in existence and thus further confuses the supervisory picture.
3. It is discriminatory legislation.
4. It will not prevent the closing of banks or savings and loan associations.

Let me explain briefly each of these points.

First, what is the real problem facing the financial institutions and the supervisory agencies? Think back for a moment over the hearings that have been held during the past year, both by this committee, your counterpart on the Senate side, and Senator McClellan's Investigation Subcommittee. What is the point that has been raised countless times? Lack of authority? No, it has been lack of cooperation. Senator McClellan pinpointed this fact, when, in the Senate floor discussion on this bill, he said:

Our hearings show emphatically and without reservation that there is a complete lack of liaison between the Comptroller of the Currency, the FDIC, and the other agencies.

And then he asked:

Is there anything in this bill that would require greater cooperation?

And Senator Proxmire answered: "No."

Nowhere in the record, to the best of our knowledge, is there one statement indicating lack of cooperation or action on the part of a State banking department or official.

And yet, in the face of these facts, the Congress is asked to pass legislation that would impose an additional layer of Federal control over State banking; that would further confuse the already confused supervisory picture where we have Washington banking agencies sailing off in all directions; and that would do nothing to solve the basic problem we are facing which is complete failure on the part of the Federal banking agencies to cooperate, and coordinate their efforts.

Second, we suggest that this bill is duplicatory. It has been charged that many States lack the power to implement cease-and-desist and officer removal orders. I say to you this charge is incorrect. All States possess and utilize cease-and-desist powers. In 35 States, authority rests with the supervisory; in 1 with the banking board; and in the remaining States the power is shared by the supervisor and board.

In 39 States, the banking department has officer removal authority. In all but four States, other penalizing powers can be used to remove an officer if necessary. In one of the four—Illinois—power will be conferred under the law approved by the legislature and now up for voter referendum.

We believe that duplicatory power, in the hands of the Federal banking agencies, can only be justified if it can be shown that the States do not adequately use the power they now possess. May I point out that the Senate hearings on this bill contain several statements by Fed and FDIC officials wherein they praise the States for the excellence of cooperation in handling unsound practices or officer removals.

Third, S. 3158 is discriminatory. When title II of the bill was originally drafted, it is our understanding that it granted full authority with regard to cease and desist and suspension and removal powers, over all insured banks, to the Federal Deposit Insurance Corporation.

I don't have to tell you what the Comptroller's reaction was. As a result, this power over national banks was deleted. Why? If the situation is as serious as some of the representatives of certain Federal agencies would have us believe, then why place this needed authority over only half of the Nation's bank deposits? Does this

that national banks are safer than State banks, that unscrupulous individuals are to be found only in State banks, that failures are limited only to State banks? The evidence hardly supports such implications.

Furthermore, I call your attention to pages 53 and 54 of the bill. Note line 11 on page 53. It reads, "The Comptroller of the Currency may certify facts to the Board of Governors of the Federal Reserve System." It does not say "shall;" it says "may." The effect, gentlemen, is to leave the national banking system right where it now is. The thrust of this bill is directed at State-chartered institutions.

Let me mention another inequity. Title II of S. 3158 would permit the Federal bank regulatory agencies to act—over insured State banks—within a reasonable time, if the State supervisor did not act. But under title I of the same bill, the Federal Home Loan Bank Board may act, over insured State associations without giving anything but token consideration to the State savings and loan authorities. And this inequity becomes even more apparent when one realizes that in 32 States, the bank supervisor is also the supervisor of savings and loan associations.

We raise the question—is the same man so superior in his work with banks that he is afforded a "reasonable time" to act, but at the same time so inadequate with respect to savings and loan associations that he is merely to be advised of any steps taken by the Federal Home Loan Bank Board? We believe that fairness suggests that the rules of the game should apply equally for both types of institutions.

Finally, S. 3158 will not prevent the closing of banks or savings and loan associations. It will not prevent persons of questionable character from milking an institution and skipping out. Senator McClellan candidly made this point on the Senate floor, and as you know, the Senate subcommittee he chairs has been studying the causes and remedies for the failures of financial institutions. The NASSB shares his feelings.

In this connection, is it not strange that the primary supervisory agencies—the Comptroller of the Currency and the State bank supervisors—on both the National and State levels say that this bill is unnecessary; that they already possess all the authority they need? Doesn't it seem slightly peculiar that the Federal agencies not charged with primary responsibility—Federal Reserve and Federal Deposit Insurance Corporation—in the bank supervisory field are suggesting that the situation is bad—so bad that they must be given the authority to come in and take over and clean up the mess.

If S. 3158 is approved, it will, for the first time, place the FDIC and the Federal Reserve Board in positions of primary supervisory responsibility. We believe that this is a vital philosophical question. It involves a change in the very structure of the dual banking system. If the Congress, in its wisdom, believes that the structure should be changed, may we respectfully suggest that this is far too fundamental an issue to be dealt with hastily in an effort to get this bill passed. If the Federal agencies are to be changed into full supervisory agencies, let us face that issue squarely and consider the advisability of a consolidated banking system.

We think there is a better answer. May we suggest a positive program of meeting the problem and getting to the root of it by the following action:

1. The basic problem is the confusion, the overlapping jurisdiction, the conflicting opinions and actions at the Federal banking agency level. Rather than compound the problem by adding another layer of supervision among the agencies involved, let us start with an overhaul by pulling Federal regulation together into a logical and reasonable framework.

2. To accomplish this goal, we suggest the creation of a commission to study the facts—to determine exactly what the problem is—and to come up with specific recommendations that will solve that problem.

Let us admit that there are differences of opinion and interpretation. There may be occasions when we might think that the FDIC is not strong enough and needs more authority. But if so, let that power be granted in a framework of proper allocation of authority in relation to the function of the agency.

Our association will be happy to participate in such a program.

Thank you for permitting our association to present its views on this bill.

The CHAIRMAN. Thank you, Mr. Burt.

I would like to ask each one of you gentlemen if there is an agreement among the witnesses here this morning that the insurance, both as to the Federal Savings and Loan Insurance Corporation and the Federal Deposit Insurance Corporation, should be raised from the present \$10,000 to \$20,000. Is that your understanding, Congressman Pepper?

Mr. PEPPER. Generally speaking, I have favored the extension of the insurance coverage. I know we had it up in the committee when I was a member of the committee.

The CHAIRMAN. I would rather have just a categorical reply, if I may.

Mr. PEPPER. Personally I favor it, yes.

The CHAIRMAN. Also, Mr. Courshon?

Mr. COURSHON. Not at this time, simply because—I have to amplify it with one sentence.

If we are here today concerned with the problems of exposure of the Insurance Corporation, until we solve the structural problems of that exposure, to double its exposure by increasing the savings risk from \$10,000 to \$20,000 in the banking system and in the savings and loan system, at a time when the supervisors say they don't have adequate tools to protect the public now makes no sense to me. As a savings and loan man practically, I would love to see it, because our institution would be better served if it had more money to work with. But in the public interest, if there is something wrong with the supervisory tools, they ought to be cleaned up before the exposure of the Insurance Corporations be doubled.

The CHAIRMAN. Mr. Strunk?

Mr. STRUNK. Well, Mr. Chairman, we have much hope that the insurance ceiling will be increased. In connection with Mr. Courshon's remark, this legislation would improve the supervisory tools. So we would improve the supervisory tools—which I agree is desirable in connection with an increase in the insurance of accounts. We think these two can well go hand in hand.

The CHAIRMAN. And Mr. Bliss?

Mr. BLISS. Our organization has taken no position on it, but I believe our members would favor the increase.

The CHAIRMAN. And Mr. Burt?

Mr. BURT. Our association has taken no position on it recently, Mr. Chairman. Some 3 years ago they did vote in favor of an increase.

The CHAIRMAN. All right.

Now, then, the officer removal part I understand is very much in controversy here, and also the nature of the judicial review. And I assume that those will be the main points. Is that right, Congressman Pepper?

Mr. PEPPER. Yes. And the grounds for the exercise of authority.

The CHAIRMAN. Yes, sir.

Mr. Multer, would you like to ask some questions?

Mr. MULTER. Yes, Mr. Chairman.

May I first say that I think Mr. Burt has made an extremely strong case in favor of the proposal that has been made many times and which is encompassed in bills before this committee—although we have had no formal hearings on them—for a single Federal agency to supervise and regulate banking institutions.

I dare say the same argument applies in favor of the idea of one insuring agency rather than two.

I think the time is fast coming when that must be done. And the sooner we get to it, the sooner we will clean up a lot of these problems.

Now, in Mr. Burt's statement, he refers to accomplishing this by the creation of a commission to study the facts. I think we have already had any number of commissions studying the facts. I think it is high time this committee went to work and developed the facts on the record, and then move one way or the other after that record is developed.

I think with the exception of Mr. Burt's testimony, Mr. Chairman, all of the witnesses are in agreement that we do need some action on these pending bills. I think Mr. Burt must agree, too, that although he points out very strongly that all of these matters are subject to ample supervisory and regulatory powers, including cease-and-desist powers, by State agencies, we do need them on the Federal level. If we need it on the Federal level, as long as there is Federal insurance involved, I think we have to tie the two together.

I agree with Mr. Burt we shouldn't duplicate what is being done on the State level. But I do think that we should and can in this committee do the job so that all of these institutions that are federally insured will be properly regulated and supervised. If a State agency fails as to a State organization, we then can proceed accordingly on the insurance level. Certainly so far as the national institutions or Federal institutions are concerned, we do need this additional power. It is merely a question of working out the appropriate language to do the right job, protecting everybody—by everybody I mean first the public, and then the institutions.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Widnall?

Mr. WIDNALL. Thank you, Mr. Chairman.

First I want to thank all of you on behalf of the minority for appearing here today and giving your excellent testimony. We espe-

cially welcome Congressman Pepper here to the committee. We appreciate your advice and counsel.

Mr. PEPPER. Thank you very much.

Mr. WIDNALL. Mr. Strunk, what is your idea of the definition of personal dishonesty as used in S. 3158, concerning removal of officers and directors?

Mr. STRUNK. Mr. Congressman, my idea of this term is a personal dishonesty would be an indictable offense under Federal or State law. I would hope that this committee would include this kind of a clarification or definition in the statute. And one of the technical amendments that we have submitted would do that.

Mr. WIDNALL. You feel that the amendment you have offered would take care of this?

Mr. STRUNK. Yes, sir. In connection with the officer removal area, this has been debatable and controversial. The bill as originally presented to the Senate was most objectionable in this connection. However, the Senate substantially narrowed the grounds for officer removal, and narrowed them to instances where there are elements of personal dishonesty, and where there is substantial harm that could come to the institution. And with the Senate narrowing the ground for removal to situations where there is an element of personal dishonesty, and with the definition in the statute of personal dishonesty being an indictable offense, we have no objection to the provisions of the bill dealing with officer removal.

Mr. MULTER. Mr. Widnall—

Mr. WIDNALL. I yield.

Mr. MULTER. Do you include within the definition of personal dishonesty self-dealing?

Mr. STRUNK. It may or may not, depending upon whether it is an indictable offense, and whether substantial loss could occur to the institution.

Mr. MULTER. That is the point. In many States, and I think on the Federal level, self-dealing may be prohibited, but it is not an indictable offense. I think that is as heinous an offense as an indictable offense.

Mr. STRUNK. In connection with self-dealing, this is a very, very broad term. We think the regulatory agencies have to proceed very carefully when they undertake to remove an officer or director for an instance where they might consider it to be self-dealing. This is very difficult to determine. Even the phrase "personal dishonesty" is difficult to determine. But we prefer that, and that is generally acceptable—particularly if we can define personal dishonesty in the statute, to narrow it and tighten it up in the manner we have suggested.

Mr. WIDNALL. I have a question for all of the panelists. I would appreciate your answer.

Do you think that appeal for a final cease-and-desist order to the Federal Court of Appeals under the Administrative Procedure Act further erodes our judicial system, where Federal statutes increasingly are avoiding the Federal district courts?

Who would like to answer first? Mr. Courshon.

Mr. COURSHON. Yes. May I amplify it with a sentence, Mr. Widnall, or would you prefer just my answer?

Mr. WIDNALL. Yes, please, amplify it.

Mr. COURSHON. Congress itself is concerned with the Administrative Procedure Act. The Senate has passed S. 1336, it attempts to change the Administrative Procedure Act emphasis to the weight of evidence—just as now is the present law under the savings and loans. It has not yet been passed by the House. And in the present bill, if Congress, in its wisdom, determines that the Administrative Procedure Act eroded individual liberty because of the substantial evidence rule as against weight of evidence, if S. 3158 is passed the way it is, because it uses the substantial evidence rule, it will supersede Congress' action in trying to make the Administrative Procedure Act move more toward the weight of the evidence.

Mr. WIDNALL. Mr. Burt?

Mr. BURR. Congressman Widnall, I am not a lawyer, and I am not qualified to answer your question. However, I must admit that the point that Mr. Courshon makes is a very persuasive one. I would be inclined to agree.

Mr. PEPPER. Before some of the members of the committee arrived, in my statement I emphasized this matter.

One of the basic differences between the Senate bill and the bill I have introduced is that the Senate bill does erode the judicial review by allowing it only when you can appeal, when the aggrieved party or parties can appeal to the circuit court of appeals, and there the rule of law is that the administrative action will stand unless—I mean if there is substantial evidence to support it.

Now, in my bill, as it is going to be amended by amendments that will be filed, and as I testified it would be a while ago, we would allow the Board to put into effect a cease-and-desist order. We would allow the Board to appoint a conservator. But that action on the part of the Board would be subject to the ordinary judicial review, beginning with the district court, and the weight of the evidence rule would prevail in the district court. And the usual right of appeal would exist. That would meet the criticism of the Board, that they are sometimes held up in putting their will into effect by a delay in court action. They could go ahead and put their will into effect. But the aggrieved parties would have the ordinary right of review beginning with the district court. And that is the way it should be I believe.

Mr. WIDNALL. Thank you. Mr. Bliss?

Mr. BLISS. My answer to your question, Mr. Widnall, is "Yes."

Mr. WIDNALL. Mr. Strunk?

Mr. STRUNK. I would like our Washington counsel, Mr. King, to handle this question.

Mr. KING. Congressman Widnall, as you know, you have touched upon a transitional phase in judicial procedure and in the jurisdiction of the courts.

Unquestionably it is due to the necessity, in view of the many new functions of the Federal Government, of allowing many things to the expertise of the agency. However, we think insofar as that transition affects the interests of our institutions in the light of the present bill, that we would not be unduly prejudiced were we to have that phrase "weight of evidence" retained with respect to judicial review.

Mr. WIDNALL. Can anybody advise me of the American Bar Association's position on this matter? Has anybody contacted them on this? Mr. Courshon?

Mr. COURSHON. I have, Mr. Widnall. The American Bar's present status, while I am waiting for this pamphlet, I can say to you they have right now under study S. 3158, and how it affects judicial review and the rights of the individuals and the rights of the institutions—and they have not come out with a finding.

I would like to quote from the pertinent portion of the 1966 Annual Report of the Judicial Review Committee of the Section of Administrative Law published in July 1966:

At the request of the Chairman, the Committee on Judicial Review is studying S. 3158, a bill to strengthen the regulatory and supervisory authority of Federal agencies over insured banks and insured savings and loan associations. Among other things this bill would provide for cease and desist orders to curb abuses by financial institutions, including authority to remove officers in the case of actions deemed illegal or dangerously irregular. Copies of this bill and supplementary materials have been distributed to all members of the Committee. As of the date of submission of this Report of the Chairman the matter is still under study by the members of the Committee.

They are also presently working as you know on the entire question of the Administrative Procedure Act. And, as you no doubt know, they are interested in moving the Administrative Procedure Act now over to the weight of the evidence.

The vice chairman of the committee, Mr. B. T. Mangano of New York stated, "I would favor the idea of an Administrative Appellate Court, but I believe I would be more inclined toward supplanting the administrative procedure review rather than the present appeal. Somewhere we must find a tribunal that will weigh facts. If the administrative review by the agencies is to be preserved in its present form, an administrative court of appeals could hardly succeed where the present courts have failed." They go on to state the main problem with the present courts is because they feel they make the expertise of the agency—they must leave the finding of the facts to the agency—when the fact of the matter is the entire case is based upon questions of fact.

Mr. WIDNALL. I would like to have you amplify, if you would, what you started to say about the section on page 2 of the Senate bill, 2(a): "If in the opinion of the Board the association is violating or has violated"—"or the Board has reasonable cause to believe that the association is about to violate a law, rule, regulation"—and so on.

Now, it seems to me that is the kettle, the sink, the stove, the house, everything else. How can you possibly sensibly do anything where you are just presuming a reasonable cause exists?

Mr. COURSHON. You cannot.

Mr. WIDNALL. Can it not be the figment of the imagination of some individual?

Mr. COURSHON. I can only deal with past history.

The Board has in the past—it is not a matter of the individuals who hold the office, because the office remains as the individuals move—the Board has in the past had this problem, and have made conclusions having to do with fact, which conclusions were later not supported.

This Congress, and the Government Operations Committee, almost ad nauseam, has heard certain cases that became almost famous or

infamous, concerning only questions of fact, not law. And the courts did not uphold the Home Loan Bank Board. And with the added power of S. 3158, there will be no question that the individual institutions, the shareholders, the owners of the institutions, if you will, won't have an opportunity to contest what is alleged to be a fact on the part of the supervisor.

Mr. PEPPER. May I amplify his answer?

Mr. WIDNALL. Just a minute, please. If they have this power, they proceeded under this power, the association would always be under a cloud, regardless of whether or not there is any substance to it. It seems to me that you are starting out with a very unreasonable premise—and without any proof in substance, you are taking an awful chance of doing immeasurable harm to an association.

Mr. COURSHON. That statement is completely true, sir. But it is more pernicious than that.

Having this power, the savings and loan business will no longer, in my opinion, have the courage to contest the Board's opinions, because the Board's opinions will be supported by their conclusions of fact, and having that right, the Board simply can remove officers and directors, even without the power of removal, because with the cease-and-desist order they may give a cease-and-desist order to a board of directors and say, "You cease and desist from retaining Mr. John Smith as your managing officer."

Mr. PEPPER. I wanted to supplement what Mr. Courshon has said by saying this, apropos of the questions of the able gentleman.

For all practical purposes, the Senate bill gives to the Home Loan Bank Board the right, one, to issue a cease-and-desist order; two, to appoint a conservator, whenever it thinks it is in the best interests of the association to do so.

Now, that is basically what the authority comes down to. I substantiate that by quoting the language to which the able gentleman referred—on page 2 of the Senate bill.

If in the opinion of the Board an association is violating or has violated or the Board has reasonable cause to believe that the association is about to violate a law, rule, regulation or charter or other condition imposed in writing by the Board or written agreement entered into with the Board, or is engaging or has engaged or the Board has reasonable cause to believe that the association is about to engage in an unsafe or unsound practice, the Board may issue and serve upon the association a notice of charges.

Now, an unsafe or unsound practice in the opinion of the Board, means something is not good for the association. And if you look on page 11, when the criteria for the appointment of a conservator are set out, one of those criteria is No. 2, in line 21, page 11:

Substantial dissipation of assets or earnings due to any violations of law, rules or regulations, or to any unsafe or unsound practice or practices and unsafe or unsound condition.

Now, I mention this to raise a question: How can a court review that—unless there are some criteria?

That is the reason that I suggested in my earlier statement that the Congress should indicate some criteria, so that the courts can review the facts in relation to those criteria. Then there is something to review—not just what was in the minds of the Home Loan Bank Board.

Mr. WIDNALL. Thank you. My time has expired. I would just like to add this. There has been comment and suggestion of raising the insurance limit from \$10,000 to \$20,000. I myself personally support that. The record will show that I introduced legislation a while back raising it to \$25,000. I have felt it should be raised, it is in line with the times, and I think it would be very helpful.

The CHAIRMAN. I have a bill to increase the account insurance to \$25,000, too—H.R. 43, introduced January 4, 1965.

Mrs. Sullivan?

Mrs. SULLIVAN. Thank you, Mr. Chairman.

I believe the witnesses this morning have been very helpful in explaining many of the difficulties that we know exist in S. 3158. But before I ask you a question, Mr. Courshon, I want to tell you that last night I had a telephone call from someone who classified himself as one of your oldest and dearest friends, Sid Solomon, Jr., in St. Louis. I told him that I expected to be here this morning to hear your testimony.

Mr. Courshon, what do you think about making cease-and-desist proceedings public, except where there is good reason that they should be nonpublic?

Mr. COURSHON. I think they normally ought to be public. In the Senate this matter was discussed, in the committee, Mrs. Sullivan, and I think there should be one reservation.

You see, the matter of whether something is public or not depends on whose ox is being gored, is the institution being hurt, if it is a public hearing? Is the position of the supervisor going to be embarrassing if it is a public hearing? Or will the people who are being charged be embarrassed if it is a public hearing?

I think that the individual being charged should have the right to request a private hearing, and that that may be determined by the supervisory agency which in fact is involved with determining the public interest. If the supervisory agency accepts the request of the person or institution charged, then it may be private. But if the person or institution charged, who are also endowed with some intelligence and concern for what is in the public interest—they may have organized that institution and built it to where it was—determines this is public business, and their shareholders and depositors ought to know what is going on, I don't think the public and the shareholders and depositors should be deprived of this right.

Mrs. SULLIVAN. Thank you.

Mr. MULTER. Would you yield a moment?

What do you think about a charge being made against an officer a few days or weeks before the annual election, and this is just a charge. Should that be publicized?

Mr. COURSHON. I say he should have the right to ask for a private hearing. I understand the thrust of your question, because I believe that what is inherent in that question is—well, if the agency wants to embarrass him, and see that he doesn't get reelected, they will want a public hearing. Well, what happens in practice is that in the past when the agency wants news to get out to the public, it gets out anyway.

Mr. MULTER. Let's take it the other way, if I may. The officer is about to be charged. He says, "I want a public hearing, and the

reason he wants a public hearing is because if you air these charges, this institution is going to fall. There will be a run on it—even though it is only a charge.”

Mr. COURSHON. I understand the problem. I certainly don't have the wisdom to give the answer. But I know this. These are, in fact, publicly owned institutions and their business ought to be known by their owners, whether they are shareholders or stockholders. I cannot give a simple answer, because as you know, Congressman, there is no simple answer.

Mrs. SULLIVAN. Thank you.

I would like to comment, Mr. Chairman, that for the past several years I, too, have been hopeful that the Congress could pass legislation to increase the insurance ceiling. And now because of the tightness of money, the increased fluctuation of the stock market, and the uneasiness of the public about the safety of their savings, I am extremely interested in seeing that the bill is amended to increase the Federal insurance, both for banks as well as for savings and loans. And I believe that you, Mr. Chairman, have clarified the thinking of the witnesses on this issue, so I will not pursue the question, only to state that if this legislation before us will tighten up the supervision of these institutions, then I think in fairness to the public, we should give them the assurance also of the safety of their savings by an increase in the insurance ceiling.

The CHAIRMAN. Mr. Ashley?

Mr. ASHLEY. Just one question.

Mr. Courshon, as I read the bill under consideration, section 4 provides for suspension or removal in cases of personal dishonesty. Section 5 provides for suspension where a felony is charged. And section 12 provides for removal where a criminal offense is proved.

Wouldn't it be more logical to expand section 5 to cover any criminal offense, and to drop section 4?

My question really is: Aren't sections 4 and 5 somewhat duplicatory, and couldn't this be eliminated were section 5 to be expanded as I have suggested and section 4 dropped?

Mr. COURSHON. It is a rather long question, Congressman, and I will try to answer it.

I take issue with section 5 in the Senate bill as drafted for some of the reasons implied in your question, because this question of what is personal dishonesty is very difficult to define, and not in fact really open for question in some ways in the purview of this whole bill. Because personal dishonesty will be as charged by the Board, No. 1. And because of the review proceedings being so limited, I don't know whether you can get into questions of fact as to what is personal dishonesty.

Mr. ASHLEY. Whether or not it be eliminated if we dropped section 4, and expanded section 5, as I have suggested? That is the thrust of the question.

Mr. COURSHON. It depends upon the matter of review. If the review is limited to the substantial evidence rule, and begins in the court of appeals, I don't think it makes any difference, No. 1.

No. 2—if you are dealing with indictable offenses, then you are dealing with something we can define. I am not trying to be evasive, Mr. Congressman. I am just trying to understand the question.

Mr. ASHLEY. Well, I don't think—Mr. Pepper, do you understand the question?

Mr. MULTER. Before Mr. Pepper answers—will you clarify that? Are you suggesting that cease and desist be as a result of a court order?

Mr. ASHLEY. What I am suggesting is pretty simple. You drop section 4 and expand section 5.

Mr. MULTER. Do cease-and-desist orders come under section 5?

Mr. ASHLEY. Section 4 is for suspension and removal in cases of personal dishonesty. You drop that, and you pick it up in section 5 by expanding the scope of section 5.

Mr. PEPPER. So as to provide what, does the able gentleman have in mind—do it how? Instead of by removal, how would you—

Mr. ASHLEY. You would expand section 5 to cover—to provide for criminal offenses, rather than personal dishonesty.

Mr. PEPPER. In my bill we don't make a man ineligible for holding an office unless he has been convicted of some criminal offense, some felony. We didn't think that just an indictment—he might possibly be suspended—but I believe before the able gentleman came in I mentioned in my bill we don't provide for removal, because we think that authority can be adequately exercised under either the present law or the bill as would be passed by the Board just telling the board of directors of the Federal savings and loan association, "Get rid of this president," or get rid of this secretary-treasurer—"if you don't we will file a cease and desist, or we will take you over with a conservator." I don't think you need to put any provision in there giving this National Board a right to remove all these thousands of officers all over the United States at all.

Mr. ASHLEY. Well, my thought was simply to try to arrive at a better answer to the problem of personal dishonesty. This has been plaguing the committee a little bit, legal definitions are a little hard to get at. My thought was to try to—I think the opinion of the committee is that there should be the powers contained in the Senate bill. We are troubled a little by the personal dishonesty definition. The effort was to try to resolve that problem.

Mr. STRUNK. I think I understand the thrust of your proposal. It would appear to be very reasonable so far as we are concerned.

Mr. PEPPER. I think the matter should be cleared up. I don't think there is any doubt about that.

Mr. REES. Would the gentleman yield?

Mr. ASHLEY. Yes.

Mr. REES. My impression of section 4 is that it says "One involving personal dishonesty," and section 5 talks about personal dishonesty actually tied in with a conviction of a felony. Therefore, if you combined the two sections, you would do away with personal dishonesty only unless there were actually a criminal conviction.

Mr. ASHLEY. Well, section 5, I think, provides for suspension where a felony is charged. Section 12 is—that provides for removal where a criminal offense is proven.

Mr. REES. If I might just make this observation—if you would continue to yield—many a time you have in a financial institution someone who is guilty of personal dishonesty, but the financial institution

will not take the case to the district attorney because it might cause a lack of public confidence in that financial institution. I think there are quite a few people who have been discharged from financial institutions because of personal dishonesty, but there was no intention of bringing their case to court, because of this problem. I have seen this in quite a few banks. I think section 4 would probably allow the Board to go into this type of case as there is great reluctance of financial institutions to seek a prosecution.

Mr. PEPPER. Mr. Chairman, may I answer the gentleman's—comment on the gentleman's question? I beg your pardon.

Mr. ASHLEY. By all means, Senator, I would like to hear your reaction to that. And I would also like to hear Mr. Strunk on that.

Go ahead.

Mr. PEPPER. I started to say—under our bill the Board has authority to make any rule or regulation it wishes. It could enter a rule or regulation that the maintenance of any officer whose conduct exhibits dishonesty shall be an impropriety, and shall be the subject of a cease-and-desist order against the association. And then under our bill as amended, they could put that cease-and-desist order in effect, and the Board would have to remove that officer.

Now, in the second case, under the law that will be passed, and that already exists, if the Board were satisfied that an officer was dishonest, it could simply tell the board of directors, "We think that man is dishonest, and if you don't get rid of him we are going to appoint a conservator." Then they would have no choice but to get rid of him.

Now, the matter of what happens in the criminal courts—I don't know that that is necessarily the responsibility of this law. But there would not be any reason why the Board could not pursue the case and bring it to the attention of the district attorney or grand jury or something like that. But that would be aside from the matter of protecting the association.

Mr. COURSHON. Mr. Ashley, may I—

Mr. ASHLEY. Yes—just after Mr. Strunk answers.

Mr. STRUNK. I think it is in part a question of how soon the Federal Home Loan Bank Board could remove an officer that they suspected of personal dishonesty, and who might be indicted.

If under your proposal they had to wait until the man is indicted, you would leave that man in there maybe too long, depending upon his nature.

Mr. ASHLEY. You think there is a validity to Mr. Rees' observation?

Mr. STRUNK. I think there is validity there. So far as the Board is concerned, they may have no interest in publicizing an indictment, and damaging that man that much more. So if they could get the man out of there, when they have grounds for believing he is doing something which is indictable, they don't necessarily have to get him indicted to get him out of the institution. So I think in the main we would be perfectly happy to have personal dishonesty defined a little more narrowly in the area of indictable offenses, but not necessarily force the Board to indict him to get him out.

Mr. ASHLEY. I think your thoughts are very well expressed, Mr. Courshon.

Mr. COURSHON. Thank you, Mr. Ashley. One other thing troubles me about the question.

The implication that indictment should be grounds for suspension, number one, implies that indictment is conviction, which is not a part of your question. But the big problem with section 5 is what happens if the man is indicted, he has been tried, and he is found not guilty. On line 21 of section 5, page 10, it says as follows:

A finding of not guilty or other disposition of the charge shall not preclude the Board from thereafter instituting proceedings to remove such officer—such director, officer, or other person from office and to prohibit further participation in association affairs pursuant to subparagraph (a) or (b), of paragraph four of this subsection.

So if we are involved in a situation where the Board has felt, or the Department of Justice has felt, without intercourse with the Board, and without consultation, that this man needs to be indicted, and they are doing their job, and then the man is full and fairly tried, and then the man is found not guilty, section 5 doesn't imply that thereafter the man is reinstated. It implies that they can still throw him out. So what is the point of being tried and found innocent?

Mr. MULTER. He may have been thrown out before he was indicted, and found not guilty.

Mr. COURSHON. But with this kind of power, if he is indicted and found not guilty, and fully and fairly now removed from the cloud, the Board still retains the power to remove him.

Mr. MULTER. And there is no means of his getting back if he is removed before being found not guilty.

Mr. COURSHON. There is no question about that, sir.

Mr. MULTER. I suggest that I think that what we must do here is be sure we give everybody ample protection, both as to rules, regulations, and cease-and-desist orders, and going to court—ample notice and an opportunity to be heard before it becomes effective.

I think before they go to court, to appoint a conservator, they should certify to the court—if they want an immediate appointment, they should certify the facts on which the immediacy and necessity and urgency require them to have it at once. And even only telephone notice—as in injunction cases—the least they have them do is telephone and say, come to court within an hour, because we are going to apply for an injunction. And the court then can give some opportunity to meet the alleged fact that they say requires the immediate action and the urgency. I think if we can work something out along that line, I think we can give the Board the power it needs, and at the same time give the protection to the public and the institutions and its officers.

Mr. STRUNK. As I understand it, I think that is correct.

This bill does do a great deal in that connection.

Of course, therefore, there is any of these stronger methods, there is always discussion. If the institution cannot convince the supervisory authorities that they are right, these things would never come to the removal area, and they would never come to the cease-and-desist area.

In connection with the cease-and-desist order and the removal order—except in there is an emergency existing, or they find that this fellow is about to make a lot of poor loans, for example, they can move in promptly, and give a prompt cease-and-desist order. If they

have reasonable grounds for believing the man is dishonest, they can get him out of there promptly.

It is always a question as to how you handle these things. Frankly, we have to rely upon the judgment and experience and the honesty and the ability of these Board members.

Mr. ASHLEY. We are talking about the balance between protection of the public, the depositing public, as against the necessity for protecting the individual.

Mr. STRUNK. In connection, again, with the removal thing, we think that the court review, particularly in this area, ought to be on the basis of the weight of the evidence, as against the so-called substantial evidence rule.

We have asked that the court review procedure be improved by having the court review these things on the basis of the facts, and not just on the basis that there was some evidence, you see. And this is particularly important in the removal area.

Mr. TALCOTT. Mr. Chairman, are we going to meet tomorrow?

The CHAIRMAN. I beg your pardon?

Mr. TALCOTT. Are we going to meet tomorrow on this bill? There are some of us here who have not been able to ask any questions.

The CHAIRMAN. How many members want to interrogate the witnesses—hold up your hands?

There are several.

Here is what we will have to do. We will have to go to the Rules Committee in the morning on the housing bill. We will have to ask these witnesses to come back the day after tomorrow morning at 10 o'clock, because we must give all the members an opportunity to interrogate you. I have a few more questions, but I could dispense with them.

Will that be satisfactory to you gentlemen?

Is that satisfactory?

Mr. PEPPER. The day after tomorrow?

The CHAIRMAN. The day after tomorrow.

Mr. COURSHON. Thursday morning, sir, 10 o'clock; yes, sir.

The CHAIRMAN. Shall we quit now, or go 10 more minutes?

Mr. Harvey?

Mr. HARVEY. I just have a few questions, Mr. Chairman.

The CHAIRMAN. All right.

Mr. HARVEY. I have some difficulty understanding the purpose of this bill and reconciling it in my own mind.

Let me ask this question. I am not sure whether it should go to Mr. Courshon or Mr. Strunk, but it doesn't matter really, one way or the other. Are these wrongful practices that this bill is intended to correct difficult to discover?

Mr. STRUNK. They may be. The wrong kind of person in managing these institutions, if he is engaged in some skulduggery, has various ways of hiding it and concealing it.

Mr. HARVEY. My purpose in asking that is the Federal Home Loan Bank Board has at the present time the right to send auditors into any S. & L., do they not?

Mr. STRUNK. These institutions are all audited and annually examined.

Mr. HARVEY. They have a right to send in auditors 365 days a year, if they want to.

Mr. STRUNK. Yes, they can. And sometimes they keep examiners in these institutions a fairly long period of time.

Mr. HARVEY. Is it your statement these auditors are unable to detect the wrongdoing?

Mr. STRUNK. Sometimes I think that is the fact. The transactions can be hid behind dummy corporations.

Mr. HARVEY. This bill would not correct that; would it?

Mr. STRUNK. No. But when the wrongdoing is found, then the supervisors can deal with it somewhat more promptly than I think they are able to deal with it at this point.

There is another thing involved here. The Home Loan Bank Board, in attempting to supervise these institutions without a cease-and-desist order, have had to put in regulations. And then if something is wrong, it is in violation of the regulation. And we hope as a result of this that the myriad of regulations applicable to every institution, good and questionable alike, can disappear, and the Board can supervise more on a case-by-case basis and deal with the problem institutions as they find them, and not have to put in a regulation.

Mr. HARVEY. It doesn't say anything in here about these regulations disappearing. In fact, it contemplates more regulations.

Mr. STRUNK. Granted this law does not say there would be fewer regulations. But the whole purpose of the cease-and-desist arrangement—

Mr. HARVEY. Let's just say at the present time if the Federal Home Loan Bank Board auditors determine a wrongful practice going on, what can they do about it? They report back to the Federal Home Loan Bank Board. Can they if necessary close the institutions?

Mr. STRUNK. They can close the institutions.

Mr. HARVEY. Can they recommend a suspension of the insurance?

Mr. STRUNK. They can recommend suspension of insurance; yes, sir.

Mr. HARVEY. Both of these are drastic remedies, I appreciate.

But—they can threaten both of those remedies as well; is that right?

Mr. STRUNK. They threaten both of these remedies, and that is part of the problem, because you have no way of combating these threats. We would ask there be put in a cease-and-desist order to stop that kind of thing, and that order then can be contested. We think that intermediate remedies—

Mr. HARVEY. You treat the cease-and-desist order very fine indeed. But the only thing that bothers me about it is the very liberal language in this bill, which is the most liberal I have ever seen, where it talks about cease-and-desist orders for any law, rule, regulation, or charter or other condition imposed in writing by the Board. That means on the basis of a letter issued by the Board you are going to bring a person into a court, and charge him and so forth with a violation of conditions set forth in a letter. This is incredible that in the United States of America we have come to a situation like that, in my judgment.

What I am getting at is this. I have sat on this committee for 6 years. In that 6-year period of time, I have seen the policy toward savings and loans just do a complete flip-flop. We had a man here by the name of Mr. McMurray a few years ago, who was coming in here

and urging the savings and loans to do everything. He was telling them we want the power to put out college loans, we want the power to make land loans, we want the power to make chattel loans and so forth. As the savings and loans do more and more, and get in deeper and deeper, now all of a sudden we are asked to enact this bill right here, which is going to be the most severe and harsh, as far as I am concerned, remedy that you could possibly put upon any financial institution. I just think the savings and loans will rue the day this bill was enacted. Now, I haven't been to this executive session. I don't know if this is warranted by the facts or not. But to me it is a sorry thing indeed when our business and financial institutions in America have come to a situation where they have to ask the Federal Government for these sort of rules and regulations to do their house cleaning for them. I think it is a pretty sad situation.

Mr. MULTER. Will the gentleman yield to me?

Mr. HARVEY. Yes.

Mr. MULTER. I think you have put your finger on one very important deficiency in the bill—this business of the possibility of writing a letter as a result of which you may close the institution, or order the removal of an officer. But this is one of the details I think we have to work out.

What we must not overlook is that as of this moment, under the existing statute, if they go in and suspend insurance of a Federal institution, that means its liquidation. Now, the State institution may continue—if as a practical matter it can. But the suspension of insurance—

Mr. HARVEY. I cannot believe that a letter threatening the suspension of insurance means liquidation.

Mr. MULTER. I am saying withdrawal of the insurance of the Federal institution means it must be liquidated. The important point is to try to define the reason to be relied upon in using the cease-and-desist power, and to properly limit that power.

Mr. HARVEY. I don't have the time to yield any more. I want to hear the gentleman's answer. What I want to say is this. This appears to me the long arm of Federal intervention really reaching down into these savings and loan institutions and telling them how to conduct their day-to-day business, based upon a letter, based upon regulation, so as to bring about the changeable whim or fancy of anyone who heads the Board. We have seen Mr. McMurray here for 4 or 3 years encouraging them to get in deeper and deeper. Now, we are in a different period of financial history, when credit is tight, when the whole market situation is different. And now some of these organizations are apparently in trouble, I gather. And now because of that reason we are asking the Federal Government to come in here and run it—the long arm of Government intervention. Now, I would like to hear their answers.

Mr. GETTYS. Would the gentleman yield?

Mr. HARVEY. No. I would like to hear the answers.

Mr. STRUNK. Mr. Harvey, in connection with the letter this is a routine that the Board has had for years. A letter is written, or a written agreement is entered into with respect to insurance of accounts. In other words, when a State-chartered institution applies for insurance of accounts, certain conditions are imposed. And this would give

the Board power to enforce those conditions that were entered into at the time insurance of accounts was granted or the charter was granted.

Mr. HARVEY. I understand that. I wonder if Mr. Courshon could answer that. He has been wanting to. I have a very limited time here.

Mr. COURSHON. I would like to answer your question.

No. 1, this bill doesn't change the investigative powers of the Board one bit, which was the first part of your question. This bill has to do with what do they do about whatever they find out. It doesn't add to their investigative powers.

Two, this bill does not imply, and I disagree completely with Mr. Strunk and the U.S. League, that the Board will get a new tool that it must use, because this bill gives broader power to take over, and there is not one bit of language in this bill that says the Board has got to use the cease and desist before it takes over. In fact, it takes out from the present law that there has even got to be an emergency to take it over. They can take it over if they cough, sir.

Mr. HARVEY. That is just the way I interpret this language. And to me it is a shocking thing, that the institutions themselves are coming in and asking for this sort of law. I have difficulty following it.

Mr. COURSHON. The institutions, many of them, are not asking. You better believe it, sir.

Mr. HARVEY. The ones I have talked to myself are certainly not asking it, and they are very wary indeed of the Federal Government exercising power such as this—whereupon the issuance of a simple letter, a cease-and-desist order can be entered at this point.

Mr. BLISS. Mr. Harvey, I do not know if you were in the room at the time I made my statement, but your questions give me heart, because the thesis which I presented was that the power to issue cease-and-desist regulations in our opinion should be limited to violations of law. To issue a cease-and-desist order for an alleged violation of a rule or a regulation, or as you say a condition imposed in writing, as to which I quite agree with your interpretation, merely means that the Board write a letter, and then that is it—it follows it up with a cease-and-desist order.

In the matter of regulations which you have referred to, in the year 1965 the Board issued 105 regulations, either proposed or adopted. The only notice given to the affected institutions was publication in the Federal Register. Very few hearings were held on those regulations. There is no requirement for a hearing. As I say, the thesis which I presented on behalf of the Council of Mutual Savings Institutions is to delete from the bill all reference to cease-and-desist orders for violations of rules, regulations, or a letter from the Board.

Mr. HARVEY. I would close with this final comment, because my time has expired. I just cannot believe that the S. and L.'s themselves individually have the personnel, the staff or the lawyers that are going to be necessary to keep up with all the Federal regulations and the letters issued from the Director of the Federal Home Loan Bank Board. This is going to make work for the lawyers, believe me.

Mr. STRUNK. You are precisely right. We have an awful lot of regulations because the Board has not had a way of dealing with prob-

lem institutions except by the issuance of regulations applicable to everyone. There is no guarantee we will have fewer regulations. But certainly if the supervisory authorities can deal with the 1, 10, or 20 institutions that are engaging in bad practices without issuing regulations covering the entire savings and loan business, we certainly will have fewer regulations.

That again is the point of a cease-and-desist power.

The CHAIRMAN. Mr. St Germain?

Mr. ST GERMAIN. No questions.

The CHAIRMAN. Mr. Gonzalez?

Mr. GONZALEZ. I have read your statement, Mr. Strunk. The only thing here I would like to get some explanation on is this.

In case this amendment or this bill is approved, how do you interpret the procedures that would be necessary to trigger off the cease-and-desist order? Can you give a hypothetical case?

Mr. STRUNK. I think I can.

If the Home Loan Bank Board finds bad practices which are not necessarily illegal, but which may be bad financial practices, the supervisors will discuss these practices with the institution concerned, with the management and the board of directors, and if they are not able to secure a correction by informal voluntary means—and in 90 percent of the cases or 95 percent of the cases they will—and if the Board still feels these practices have to be stopped, and they cannot get them stopped in any other manner, then they can issue a cease-and-desist order. That order is reviewable, first through administrative hearings—

Mr. GONZALEZ. Excuse me. When the cease-and-desist order is issued, does it mention specifically—cease and desist from a, b, c, d?

Mr. STRUNK. Yes—It must be cease and desist from these specific practices.

Mr. GONZALEZ. Thank you very much.

The CHAIRMAN. I assume we will have only a couple of minutes' time. So without objection, we will carry out our plans heretofore announced, asking you gentlemen to be back here Thursday morning at 10 o'clock. And the committee is requested to meet with the Rules Committee in the morning at 10:30 on the housing bill.

Mr. CLAWSON. Mr. Chairman, before we recess, I note there is one man from California who is representing a group and would like to be heard also on this same bill. Would it be possible to hear him on Thursday?

The CHAIRMAN. After we get through with these witnesses, we would be glad to.

Mr. PENNER. Thank you very much, Mr. Chairman, and members of the committee.

The CHAIRMAN. And of course you may make additional comments as we promised in the beginning.

The committee will stand in recess until 10 o'clock on Thursday.

(Whereupon, at 11:58 a.m., the committee adjourned, to reconvene at 10 a.m., Thursday, September 22, 1966.)

FINANCIAL INSTITUTIONS SUPERVISORY AND INSURANCE ACT OF 1966

THURSDAY, SEPTEMBER 22, 1966

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C.

The committee met, pursuant to recess, at 10 a.m., in room 2128, Rayburn House Office Building, Hon. Wright Patman (chairman) presiding.

Present: Representatives Patman, Multer, Barrett, Mrs. Sullivan, Reuss, Ashley, Moorhead, Gonzalez, Minish, Weltner, Grabowski, Gettys, Todd, Ottinger, McGrath, Hansen, Annunzio, Rees, Widnall, Fino, Mrs. Dwyer, Halpern, Harvey, Talcott, Clawson, and Mize.

The CHAIRMAN. The committee will please come to order.

Mr. Talcott?

Mr. TALCOTT. It is certainly good to have an opportunity to interrogate witnesses. Since you and I are the only ones here, I appreciate this unusual opportunity.

The CHAIRMAN. Under the rules, too, we conduct hearings.

Mr. TALCOTT. Will I still be limited to 5 minutes?

The CHAIRMAN. Go ahead and proceed.

STATEMENTS OF HON. CLAUDE PEPPER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA; ARTHUR H. COURSHON, ON BEHALF OF THE NATIONAL LEAGUE OF INSURED SAVINGS ASSOCIATIONS; GEORGE L. BLISS, PRESIDENT OF THE COUNCIL OF MUTUAL SAVINGS INSTITUTIONS, NEW YORK, N.Y.; STEPHEN SLIPHER, LEGISLATIVE DIRECTOR, UNITED STATES SAVINGS & LOAN LEAGUE; ACCOMPANIED BY T. BERT KING, WASHINGTON COUNSEL; AND HOLLIS BURT, EXECUTIVE VICE PRESIDENT OF THE NATIONAL ASSOCIATION OF SUPERVISORS OF STATE BANKS

Mr. PEPPER. Mr. Chairman, I introduced yesterday in the House an amended version of my bill, H.R. 17703. The Record Clerk in the House promised me that the printed bill, 50 copies, would be here in your committee this morning at 9:30.

Your staff, and mine, too, have been after them, and I think they will be over here shortly, and your staff will distribute them at the appropriate time. The new number is H.R. 17900.

I would like just to have 5 minutes to point out the differences between the two bills when they get here.

The CHAIRMAN. We will take that up later on.

Mr. PEPPER. Thank you.

The CHAIRMAN. Of course, the Congressional Record did not come out until a few minutes ago, because of the late sessions last night. We will take it up later.

Mr. Talcott?

Mr. TALCOTT. Thank you very much, Mr. Chairman.

Many questions have been asked and answered already. I, too, wish to commend the witnesses for taking the time and having the interest in this legislation to come here and give us the benefit of their views.

This is a very important phase of legislation—the obtaining of evidence, testimony, in committees. I think that when we do take full advantage of this opportunity, this procedure of Congress, we will achieve better legislation.

Is it not true that if we increase the insurance on individual accounts from \$10,000 to \$15,000 or to \$20,000 at this time that we are going to be advertising that the savings and loans—that the financial industry—are in serious trouble?

We are worried that \$10,000 is not going to be enough to protect the savers. Rather than show confidence in the industry, are we not going to show a lack of confidence in the industry?

Mr. SLIPHER. Well, I will just comment, in the past it has been increased twice, and the public seemed to think it represented an endorsement.

Mr. TALCOTT. Do you think we have the same general financial, economic and monetary situation now that we had during the last two times this insurance was increased?

Mr. SLIPHER. One was in 1935 and one was in 1950.

Mr. TALCOTT. Did we have general inflation and recession at the same time?

1935, I do not recall as well as some other people do.

Did we have creeping, galloping inflation and recessions in the building industry at the same time?

Mr. SLIPHER. I do not think they are comparable situations.

Mr. TALCOTT. But, you still expect the same results?

Mr. SLIPHER. Just from the practical point of view, our people see customers come in and say, "I have about \$20,000. I am going to put up \$10,000 with you, and I will put up \$10,000 in corporate bonds, or something else." We just know that from over the counter.

If it were \$20,000, they would say "I will leave it all with you."

There might be a few people who have read the financial press and they might say: "Congress is worried." I think there is some validity to your point. I do not think it is major.

Mr. TALCOTT. Is it not true that a person with more than \$10,000 to save and who is taking advantage of the multiple accounts, opportunities that most people have, is (a) in the class of "sophisticated money," and (b) is going to put the balance of the \$10,000 or \$20,000 where he can get the most interest, particularly with the interest rate ceilings that have been established?

Mr. SLIPHER. There is some of that, no question. You are not going to double the amount of it. All we are talking about is getting 1 out of 10 or 20 people of these people who might add some money, and there are some people, if just a fraction, who add.

Mr. COURSHON. The question of the confidence of the public is involved in your question, not just a matter of how much more money will or will not go through the associations.

I do not think that the public's confidence in the savings and loans has been shaken by the actions necessarily in the savings and loans.

Some of the problems have been heightened by the speeches of the supervisory people in support of this type of legislation—I think that the sophisticated saver uses exactly what you are talking about. The pamphlets are out that say you can save \$70,000 insured—\$10,000 in your wife's name, \$10,000 you and your wife, and so on.

So, the sophisticated saver, in my opinion, is already saving a lot more than \$10,000 in savings and loans. The average balance of the small saver is a lot less than \$10,000 and, for the great majority of the people, this increase to \$20,000 will have no effect whatsoever.

They have not placed that kind of money in the savings and loans.

Mr. TALCOTT. Is not this increase a sort of a cheap way out for the savings and loan industry when they should be advertising: "We have good management, high integrity", instead of, "Insured by an agency of the Federal Government"?

Is that what you are relying on?

Mr. COURSHON. It may not only be a cheap way out in one sense, it may be the dearest way out in another, because that gives the underwriter a chance to say, "Be glad to take over."

Mr. TALCOTT. Would the people representing the savings and loan industry or banking industry object if we had an amendment prohibiting the advertising of the insurance outside of their building?

Mr. COURSHON. Outside of their building?

I think they all will object to it.

Mr. TALCOTT. Then this insurance is what they are relying on primarily?

Mr. COURSHON. I think the savings and loans of this country rely, and properly so, on the fact that their accounts are insured by an instrumentality of the Federal Government.

Mr. TALCOTT. Some States, in their State supervisory agency, are less able and less competent than some others.

Would California be one of the incompetent State supervising agencies?

The answer is "No"?

Mr. COURSHON. Not only "No," but I think California has been pointed to by the Federal people as being an example of a State that has proper State supervision.

Mr. TALCOTT. Yet, we have had a pretty high proportion of the failures in California, but the failures are not only attributable to the supervisory agencies, are they?

Mr. COURSHON. Regulation is not going to stop failures of a business.

Mr. TALCOTT. Some have practically suggested that we could avoid failures if we had Federal agents in our associations. There was one case where, in a San Francisco bank, we had the Federal Reserve Board, FDIC, and the Comptroller's Office practically sleeping in the San Francisco bank for months before it was closed. And in that gross irregularity, nothing was done about it by the Federal agencies, and many people lost a lot of money. But some political friends saved a lot of money.

Would we be inviting similar incidents with this proposed legislation throughout the whole United States as well as California?

Mr. COURSHON. I do not know that we are inviting it. We have to look to the record.

I just want to very quickly find on what it was, sir, in my statement—

Mr. TALCOTT. All the Federal regulatory agencies and everything we had involved in that case did not prevent the bank from failing and hurting a lot of innocent people.

Mr. COURSHON. I would like to add another example.

On page 9 of my testimony, we point out that the Federal Home Loan Bank Board in 1960 knew about the Illinois cases, and yet they did not bring any action until 1963. The action they brought was the same action they could have brought in 1960, to wit, the termination of the insurance. It is not just through the Comptroller or California.

Mr. TALCOTT. In California, the difference was who your political friends were. This is a very bad situation and I do not want to permit it to spread further.

Mr. Chairman, I appreciate your extending my time to 6 minutes.

The CHAIRMAN. I think Mr. Clawson was next.

Mr. CLAWSON. Thank you, Mr. Chairman. I suggest my time be used by one of our savings and loan people from California, but I do not see him in the hearing room this morning. However, I do have a copy of his statement.

The CHAIRMAN. Without objection, we will put the statement in the record at this point.

You may identify him.

Mr. CLAWSON. Mr. Tom Bane.

The CHAIRMAN. His statement will be placed in the record at this point.

(The statement of Mr. Bane follows:)

STATEMENT OF TOM BANE, EXECUTIVE VICE PRESIDENT, COUNCIL OF SAVINGS AND
LOAN FINANCIAL CORPORATIONS

Mr. Chairman and members of the Committee. I appear here today on behalf of the Council of Savings and Loan Financial Corporations.

The Council is the most recently formed national trade association in the savings and loan industry. It was formally organized in 1965 by a group of savings and loan executives that had previously met together on an informal basis to discuss industry problems. The Council has membership in ten states. Combined assets of our membership exceeds five billion dollars.

The principal purpose of the Council is to represent the interests of savings and loan associations organized on a guarantee stock basis. We count among our objectives, however, the broader purpose of promoting sound growth in the savings and loan industry, so that this industry may be better able to fulfill its primary function of facilitating home ownership among our expanding population.

Our testimony today is limited to Title I of S. 3158, and more specifically to section 102, the section dealing with federally insured savings and loan associations. At the outset, let me make it clear that the Council supports the underlying premise of Title I of the bill, as stated to this Committee by the Chairman of the Federal Home Loan Bank Board on April 4, 1966. He said at that time concerning this bill that—

Our underlying premise . . . is that there is definite need for the provision of new and effective intermediate remedies, more limited in impact and more readily employed.

We fully subscribe to that statement.

PERMANENT CEASE-AND-DESIST ORDERS

Title I of S. 3158 proposes that the Board would have the power to issue cease-and-desist orders after hearings for violations of law or regulations or for the commission of unsafe or unsound practices. Chairman Horne described the procedure for issuing such orders in the following language in his statement:

"Following notice and the holding of a full hearing on the record before an independent hearing examiner, an order could be issued by the Board which would become effective after 30 days. If, during that 30-day period, an association wished to appeal to a court of appeals, it could do so, and obtain judicial review of the Board's action."

We support the Board's request for the proposed cease-and-desist remedy. We believe that if the Board is granted these new powers it will be encouraged to resort to the new processes of law given it in this legislation rather than to rely on threats of revocation of insurance in order to obtain the ends it believes desirable. Let me be clear. We do not challenge the moral integrity of any member of the Board, or any person on its staff. However, past Boards have had constant resort to threats and innuendoes, rather than to due process of law, in order to achieve their ends. These informal arm-twisting procedures have been rationalized on the ground that the only legal remedy available to the Board and its staff is the drastic one of instituting proceedings to revoke insurance. If the normal cease-and-desist procedure requested is granted to the Board, neither it nor its staff will have a valid excuse for failing to proceed formally in accordance with the law. In such proceedings we will be able to obtain independent adjudication of our rights, and will no longer be put in the position of having to forfeit rights to avoid the initiation of insurance revocation proceedings.

TEMPORARY CEASE-AND-DESIST ORDERS

Subsection 407 (f) of the proposed legislation would also give the Board power in its own administrative and unfettered discretion to issue "temporary" cease-and-desist orders without hearing. In issuing such orders, the bill proposes that the Board act as prosecutor, judge and jury, and the "safeguards of the judicial process" are to be eliminated.

We fully recognize that there may be exceptional cases where the Board must obtain rapid relief. We believe, however, that such relief should come from United States district courts. We believe that if the Board feels it must obtain immediate cease-and-desist orders without full hearing, it should be required to apply to the appropriate United States district court for such an order. We submit that the district courts have shown the ability throughout their history to act promptly in issuing temporary restraining orders and preliminary injunctions at the request of government agencies, as well as civil litigants. Indeed, when it comes to prompt action, the federal courts have usually shown the ability to move more swiftly than many of the administrative agencies. At the same time, we believe that history shows that the district courts are far more apt to protect private rights without sacrificing the public interest than most administrative agencies. If the Board cannot convince a federal court that an emergency exists then an emergency probably does not in all reality exist and the Board can resort to the regular cease-and-desist procedure. We propose that, where the Board seeks temporary cease-and-desist orders, it be authorized by an amendment to S. 3158 to obtain them from federal district courts pursuant to safeguards analogous to those laid down in Rule 65 of the Federal Rules of Civil Procedure. If you do not provide these safeguards, you might as well strike the provisions for the regular cease-and-desist provisions. The staff of the Board will rely wholly on the temporary and emergency type of order because it will be easier for them and they can act as prosecutor, judge and jury without any interference.

UNSAFE OR UNSOUND PRACTICE

One feature of the bill that disturbs us is the repeated use of the words, "unsafe or unsound practice." A finding by the Board that such a practice has been or is about to be engaged in is sufficient basis for termination of insurance or the issuance of a cease-and-desist order. But what is an "unsafe or unsound practice." The term is not defined in the bill. We believe that some clearer standard should be spelled out in this legislation, for in the absence of such a standard the bill would simply facilitate *ex post facto* regulation. The Board could impose

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any of the above sanctions upon the simple declaration that a practice previously not challenged or proscribed was in its view "unsafe or unsound."

It is noteworthy that the House Committee on Government Operations made essentially this same point in 1962 in its investigation and study of the Board's activities in Clovis, New Mexico, H. Rep. 2492, 87th Cong., 2d Sess. 3. The Committee there said

"Unsafe or unsound practices must not be tolerated."

"The Federal Home Loan Bank Board, however, has not issued definitive guidelines for the associations. Instead, the Bank Board has allowed the Director of its Division of Supervision, . . . to make his own determinations in each case as to what constitutes unsafe or unsound operations and it has permitted him to interfere improperly in the management of the associations."

"The Board has ample power to promulgate rules and regulations, and under the bill it can issue cease-and-desist orders for violations of such rules and regulations. In view of this we strongly believe that the power to impose sanctions under other circumstances need not be so broad. We would propose that instead of the words "unsafe or unsound practice" there be substituted the words "practice that presents a clear and present danger to the Corporation's interest as insurer of accounts." Admittedly, this standard is also somewhat vague, but its use would focus attention on the proper subject of the Board's concern as to state chartered institutions—that is, the interest of the Federal Savings and Loan Insurance Corporation as insurer of accounts.

EXAMINATION OF AFFILIATES

Subsection 407(m) grants the Board power to examine "affiliates" of savings and loan associations, but provides that the cost of these examinations shall be paid by the association. We do not oppose a grant of power to examine affiliates. Indeed, we welcome the opportunity to give the Board the facts it desires about the operations of affiliates of our savings and loan associations. In California, savings and loan financial corporations are already required, as a result of the passage in 1964 of a bill that we supported, to submit to extensive and detailed examinations by the California Savings and Loan Commissioner. Results of these examinations have been made available to the Board, and the cost of these examinations in California are borne by the general budget of the Savings and Loan Commissioner.

However, while we support the principle of full disclosure, we see no reason why the cost of these examinations should be borne by the savings and loan associations. We believe the funds to conduct these examinations should come out of the appropriated funds of the Board. The power to conduct unnecessarily extensive examinations at the association's expense, is the power to coerce or destroy. This is particularly true where the affiliate is not a savings and loan association, and is thus engaged in endeavors beyond the scope of the Board's expertise. The Board could undertake to examine all of Sears Roebuck at the expense of Allstate Savings and Loan. Even examinations of lesser affiliates could result in substantial and possibly crippling cost to an association. Therefore we urge that an amendment be adopted which would strike the sentence in section 407(m) providing that the cost of examining an affiliate shall be paid by the savings and loan association with which it is affiliated. Such an amendment would not only insure that the threat of examinations would not be used as a coercive measure, but it might well tend to diminish controversy as to whether examinations actually conducted by the Board are, in fact, necessary.

ADDITIONAL RECOMMENDATIONS

Although they go beyond the text of this bill, there are two suggestions the Council would like to put before this Committee. We believe these suggestions have a direct relationship to the purposes of S. 3158.

1. Increase insurance of accounts to \$20,000.00

First, doubling the insurance of accounts makes especially good sense in the context of the current crisis in homebuilding. By increasing the amount of protection afforded the individual saver, by bolstering public confidence in our savings institutions, people will be encouraged to save more, thus increasing the supply of money available to homeowners and homebuilders.

It will benefit everyone—the individual saver, the homebuyer, the homebuilder—and hurt no one. It will cost the individual saver nothing. It will cost the Government nothing. Premiums for the insurance are paid by the insured institutions themselves.

Moreover, the FDIC and the FSLIC are both well-equipped and financially able to handle this \$20,000 insurance ceiling.

Legislation has already been adopted this session which may harm savings and loan associations. *This* is one proposal which will help them. The increase in funds for the F.N.M.A. will not help the savings and loan industry because it primarily loans on conventional mortgages. In fact, the F.N.M.A. notes may well be purchased by funds withdrawn from savings accounts.

The public's confidence in our financial institutions will have a great bearing on the health of our economy. This one act of Congress will greatly strengthen that confidence.

2. *Mergers in public interest*

Secondly, savings and loan associations are more interested in preventing defaults than either the FHLBB or the FSLIC. Bad publicity concerning one association or a default hurts every association everywhere in the United States. Federally chartered associations at present can merge with other associations, but a state chartered association cannot merge with another state chartered association if the latter is under a holding company form of organization. In some parts of the country the holding company form is dominant. Removing them from the field of merging partners throws greater strain on the FSLIC and causes a greater hardship on an already troubled association.

Give *us* the same tools possessed by the federally chartered institutions to protect our own public image and the tools to absorb any weak association. Such mergers can be subject to prior approval of the FHLBB and be restricted to "Mergers in the Public Interest." We caution, however, using the language "to prevent a default." This may be good clear legal language but it would be newspaper headline print for every merger that took place. Such language would only result in damaging the public image of *every* financial institution, including banks. It is not logical to pass legislation to ease merger problems and write the legislation in such a way that will cause more problems, more default, and more supervisory mergers.

CONCLUSION

In conclusion I wish to emphasize again that the Council wholeheartedly agrees with the underlying premise of this legislation. We believe that the formalization of sanction procedures will be of benefit both to the Board and to the industry. Good faith differences about the proper interpretation of laws or regulations can be decided free from coercive effects.

In granting the Board new powers, however, Congress should, we believe, be cautious not to create the possibility that the new sanctions will be used in the same manner as the old. That is, the Board should be encouraged to *resort* to the new procedures, not to *threaten* to resort to them. We believe the changes we have suggested will avoid the possibility that threats, rather than formal proceedings, will be the rule.

We hope that you will adopt our amendments, including the provisions for "Mergers in Public Interest" and doubling the insurance on accounts. If you do, the savings and loan industry and the public will be very grateful to you.

Mr. Chairman, attached to our statement is a summary of our recommended amendments.

RECOMMENDED AMENDMENTS TO SECTION 102 OF S. 3158 BY THE S & L COUNCIL

1. Amend subsection 407(f) to read:

"(f) TEMPORARY RESTRAINING ORDERS AND PRELIMINARY INJUNCTIONS.—Whenever the Corporation shall determine that the violation or threatened violation of law, rules, or regulations, or the practice or practices that present a clear and present danger to the Corporation's interest as insurer of accounts, specified in the notice of charges served upon the institution pursuant to subsection (e) (1) of this section, or the continuation thereof, could cause insolvency or substantial dissipation of assets or earnings of the institution, or could otherwise seriously prejudice the

interests of its insured members or of the Corporation, the Corporation may apply to the United States district court for the judicial district in which the principal office of the institution is located for a temporary restraining order and preliminary injunction requiring the institution to cease and desist from any such violation or practice. Such applications shall be governed by the same rules as are applicable to applications for temporary restraining orders and preliminary injunctions in civil actions in United States district courts, including all rules relating to appeals from such orders and injunctions. Any preliminary injunction issued pursuant to this subsection may remain in effect until the completion of the administrative proceedings pursuant to the notice of charges served under subsection (e) (1) or until such time as the Corporation shall dismiss the charges specified in such notice, or, if a cease-and-desist order is issued against the institution under subsection (e), until the effective date of any such orders, or until set aside by order of court.

2. Substitute for the words "unsafe or unsound practice" the words "practice that presents a clear and present danger to the Corporation's interest as insurer of accounts" at each place that such words appear in section 102.

3. In section 407(m), strike the sentence reading "The cost of examination of such affiliates shall be assessed against and paid by the institution."

4. Increase the Insurance of Accounts to \$20,000.00.

5. Section 408(c) of the National Housing Act, as amended, should be amended to read as follows (new language is underscored.):

"It shall be unlawful, *except when the Corporation shall decide that such acquisition is required in the public interest*, for any company on or after the date of the enactment of this section—

- (1) to acquire the control of more than one insured institution; or
- (2) to acquire the control of an insured institution when it holds the control of any other insured institution."

The CHAIRMAN. Any other questions from any of the members?

Mr. MIZE?

Mr. MIZE. I understand that one of these institutions failed in Kansas. Does anyone know about that one?

Mr. SLIPPER. I never heard of it.

Mr. MIZE. That is all.

The CHAIRMAN. Mr. Annunzio.

Mr. ANNUNZIO. I want to ask Mr. Courshon: Are you in favor of S. 3158?

Mr. COURSHON. No, sir.

Mr. ANNUNZIO. Are you in favor of H.R. 17703?

Mr. COURSHON. Yes, but I think there are grounds for modification of it, and I do not know if you were here when Congressman Pepper came in this morning, but he put in, as I understand it, a new bill which is a modification of H.R. 17703, bearing number H.R. 17900 which was to be here at 9:30 this morning from the Printing Office, and the chairman has indicated that they are trying to get these copies to you. That would be the bill that we could support completely. The point of the bill is that we took the letter that was presented to this committee, signed by Mr. Horne, that pointed out his objections to H.R. 17703, and tried to accommodate to those.

The Senator, who is much more an authority on the subject than I am, knows both sides of the problem, and H.R. 17900, which is now in, is a bill we believe we could support completely, and we believe that any reasonable supervisor could support it because it gives the Board the action they have been asking for.

Mr. ANNUNZIO. Getting back to S. 3158, would this legislation make the Federal Home Loan Bank Board a policeman, prosecutor, and judge, in your opinion?

Mr. COURSHON. And the jury.

Mr. ANNUNZIO. And the jury?

Mr. COURSHON. Yes, sir.

Mr. ANNUNZIO. Thank you. No further questions, Mr. Chairman.

Mr. PEPPER. Would the gentleman allow an amplification of that answer?

The basic difference, in our point of view, I would say to the gentleman, is whether or not the court should have the right of review of the facts. My amended bill provides that a cease-and-desist order may be put into effect without a hearing if it wishes to do so, by the Board. But that then the aggrieved would have the right to go to a U.S. district court for the review; however, the court could not issue an injunction until at least for the 60 days that order would be in effect.

Mr. MULTER. Would you yield at that point?

Mr. ANNUNZIO. Yes, I yield to the gentleman from New York.

Mr. MULTER. Does your proposal encompass the right of the court to retry the whole case?

Mr. PEPPER. That is right. It gives the court the right to review the facts as well as the law involved. But it allows the Board to put into effect its cease-and-desist order or allows the Board to put a supervisor in charge in case they want to take over the institution, and that supervisor-in-charge would be there at least 6 months, if they wanted to keep him there while a review of the matter in the ordinary way, including a review of the facts, was underway in the courts.

That is the basic difference here.

Mr. MULTER. Let me ask you this: If this is a feasible compromise—and what I am doing now is thinking out loud—under existing law, if you go to court, the court will say: "We will look at the record and see if there is any evidence to support the findings of fact", and if there is, that is the end of it. Your proposal is to have the court retry the whole case. Could we work out a compromise between the two so the case would be reviewed by the court with the right to either party, either the Board or the association, or the officers to submit any additional evidence they may desire to submit, and then let the court make a finding so you do not try the whole case all over again?

Mr. PEPPER. That is substantially covered in our bill.

I am just thinking out loud here. I have not consulted with anybody else about it.

One possible compromise between the two points of view, it seems to me might be that the Board would have the right to put an order into effect, or put a conservator in charge. But the aggrieved then might have the right of immediate review before the court of appeals on the record made, provided the aggrieved had a right, like a defendant in court, to put whatever it had to say in the record made by the Federal Home Loan Bank Board and the whole record on the facts as well as the law might be reviewed by the court of appeals.

Mr. MULTER. It would avoid three trials. You have one before the Board, then you go to court—if you do not have a new trial—the court looks at the record, and finds that it disagrees with the record, and they may have to send it back for new trial again. Why do not we skip that third step and let the court look at the record, take additional testimony that either party may want to submit and make a determination?

Mr. PEPPER. That is what my bill provides.

The CHAIRMAN. Would you yield on that point. I think it is important to keep in mind that most of the agencies go to the appellate court. Now, with yours, you go to the district court?

Mr. PEPPER. Yes.

The CHAIRMAN. It occurs to me that that would or could cause a delay of maybe years. If you have a trial de novo in a district court, you just have no facilities for further administrative procedures. It is like a regular court of law, and all of these appeals, and everything, up to the Supreme Court take years and years in order to get a determination. I wonder if you would not agree that any appeal would be to the appellate court?

Mr. MULTER. And let that court take all the proof?

Mr. PEPPER. I would like Mr. Courshon to answer that.

Let me say this: I think it is entirely possible that in a great majority of cases, the decision of the district court might be accepted by both parties and that you would be relieved of the necessity, but I would like Mr. Courshon to comment on your question if he will.

Mr. COURSHON. May I respond, Mr. Chairman and Congressman Multer, to your thinking out loud?

I would like to get back to the thrust of your question.

Under H.R. 17900, it is entirely different than any agency's power—it will be broader than any agency's power, because we have to deal with the temporary order.

In the temporary order that the Board brings, there has been no hearing; there has been no administrative procedure; there will be no duplication. They walk in and say "cease and desist from doing this."

Under the proposed new bill, under H.R. 17900, that order must be obeyed. There has never been a hearing. You then take that to the district court. As a condition for the district court hearing it, sir, you must be complying. You remove the power from the district court to upset that order for 60 days, and then Congressman Multer, to get to the question of duplication, because there has been compliance and the Government's will has been worked and the public's interests have been safeguarded in the view of the Government, and because the court cannot overturn it for 60 days, by injunction or any other process, and because there must be compliance, the court then has the right to do one of two things: Order the Board to go on with its administrative hearing and bring its case, which it has never done with a temporary order, or say the exact point that you have made: "Why have a duplication? We will hear it now. Because the institution or the individual is complying—is complying—and there has never been any hearing or any case, we will take it as a trial de novo."

No. 2. Under H.R. 17900, Congressman Multer, again to avoid duplication, we have returned to the bill the power which is to have a supervisory representative in charge, on the Board's own finding of emergency, to take over without notice. Again, there has been no hearing and no trial, so there is no duplication, and that man may stay in there under the present law 6 months, 12 months—and, if you think of bankruptcy, he has all the powers of a receiver, he is a trustee. Then, for it to become permanent, you would then have the hearing in court, or the hearing provided for under 5(d)(2). What we

have tried to do more than in any agency: There is no law, Chairman Patman, that tells the Government the courts have to work their will forever without even removing it. In the SEC law, they can delist a company, but the courts are not enjoined from working their will upon the SEC. We are enjoining in this bill the courts from working their will on the Federal Home Loan Bank Board. No agency has ever been granted, to my knowledge, that type of power, and we are preventing a duplication of hearings. But what we are saying to the Government is: "If you are working your will, if you are giving a reasonable time to let the dust settle"—because we are talking about emergencies, cease-and-desist orders—60 days is plenty of time to get your whole case in and get your facts in and let an impartial tribunal review the facts.

The CHAIRMAN. I think we have discussed that pretty fully, do you not think?

Mr. MULTER. Just one other thing, Mr. Chairman.

Under the Securities and Exchange Commission Act, when the SEC issues an order to delist, has the company a right to go to court and enjoin the delisting until the case is tried?

Mr. COURSHON. The company has the right to request injunctive relief, and there is no prohibition, to my knowledge, and I think there are able counsel available to this committee that are more of an authority on the SEC than I am.

I have been involved in SEC cases and have seen the courts take the matters and hear them as a trial de novo, and upon hearing, order the SEC to relist the companies.

Mr. MULTER. In your bill, if the order is issued, can I go to the court and ask for an injunction against the cease-and-desist orders?

Mr. COURSHON. And the injunction may not be granted for 60 days. The court's teeth have been pulled. So, Mr. Horne cannot tell this committee that the proposed bill, H.R. 17900, places him in a position where he cannot protect the interests of the country, "because in fact the court can delay the operation of its order." We are saying that no court can delay it, and, furthermore, it stays for 60 days. But as long as you have got what you want, why should not the rights of these people involved have an opportunity for a full and fair hearing before an impartial tribunal?

Mrs. SULLIVAN. I have a question to ask Mr. Slipper, Mr. Chairman.

Mr. Slipper, on the question of public hearings versus private hearings, the present emphasis in S. 3158 is on private hearings. I find this disturbing, because secret Government proceedings are an alien doctrine in an open society such as ours.

Now, when you deal with financial institutions, there may be times when it is in the public interest to have private hearings; for instance, to avoid an unnecessary run on an institution. But the emphasis in any law we enact should certainly be on the side of public hearings, rather than encouraging governmental secrecy.

Mr. Courshon agreed that if this bill is enacted, that it should provide for public hearings except where the agency, after considering the views of all the parties, determines the public interest would be better served by private hearings.

I expect to offer such an amendment to this bill, which will provide for public hearings, but giving the agencies flexibility to conduct them

in private. Chairman Horne has advised me he supports it, and so does the National League.

What are the views of your organization, the U.S. League, Mr. Slipper?

Mr. SLIPPER. We would certainly not object to that amendment. The issue of public versus private hearings has not been big in our minds. We certainly support that amendment.

We recognize the desire of Congress to avoid these secret hearings.

Mrs. SULLIVAN. Thank you.

Mr. COURSHON. May I ask one question, insofar as your amendment? One thing about your amendment troubles me.

Is it your intention that the Board would be the sole judge as to whether it would be a public or private hearing?

For example, the Board may determine for its purposes, which may not be for the public interest, that it should be a private hearing, and there may be an honest difference of opinion between the association and the Board as to whether it should be public or private.

Will you consider the possibility, that if there is a difference of opinion between the Board and the institution involved as to whether it should be a public or private hearing before the local courts on that issue with an immediate determination? Because: You understand the implication?

Mrs. SULLIVAN. Yes.

Mr. COURSHON. I have been troubled with my answer since I gave it.

Mrs. SULLIVAN. Perhaps, a judicial review would help solve this difference between the Government authority and the institution involved.

Mr. COURSHON. You understand the point I am making, and, as I say, I have been troubled with the answer since I gave it.

Mrs. SULLIVAN. You emphasized the other day that all of this is in the public interest, and it should be brought out.

Mr. COURSHON. That is my belief.

Mrs. SULLIVAN. I think we have got to be aware of and protect a possible run on the institution before action could, proper action could, be taken. What we are going to try to do is to amend the bill to protect the public interest, and yet the agency certainly will be acting in the interest of the public and should have enough information from the institution itself to know how to act.

Mr. COURSHON. I agree. I know that the public information law, which I believe becomes operative in 1967, the new public information law—

The CHAIRMAN. Passed, effective 1967.

Mr. COURSHON. I know the intent of Congress is to continue from that act and past history, to have less star-chamber proceedings, and if I were to resolve this question, I would say that it should be resolved in favor of a public hearing.

Mrs. SULLIVAN. Thank you.

The CHAIRMAN. Mr. Reuss?

Mr. REUSS. Thank you, Mr. Chairman.

On this question of a trial de novo, as I read the bill before us, the proceedings in the U.S. circuit court of appeals on review shall be—and I am quoting from page 16, lines 6 and 7, of the Senate bill 3158—“Review of such proceedings shall be as provided in the Administrative Procedure Act.”

Then, one goes to the Administrative Procedure Act of 1946, section 1009 (e) of the United States Code. It includes clause B (5), which says that the orders of the Administrative Board shall be upheld unless they are “unsupported by substantial evidence.”

While it is not a trial de novo, it does permit the court to throw out an improvidently made administrative decision which lacks substantial evidence to support it.

Would you like to comment? I would like comment from any of you gentlemen, Senator Pepper, or any of you.

Mr. PEPPER. I would say to my able friend from Wisconsin: The difference is this, as the gentleman pointed out: Under the Senate bill, before the court of appeals, the only thing to support the Board's action that the court would have to find would be that there was substantial evidence. That is to say, any reasonable amount, relatively little evidence—if they had some evidence upon which they base their action.

In our bill the right of review will give the court the right to review the weight of the evidence. They would examine the facts, all of the facts, and determine whether the weight of the evidence was in favor or against the action of the Board. It is a question of the majority of the evidence, the weight of the evidence, as against a relatively small amount.

Mr. REUSS. I think the gentleman has very clearly delineated the difference—and, indeed, there is a difference.

I would now like to ask this question under the Securities and Exchange Act—

Mr. PEPPER. Mr. Courshon would like to say something on that.

Mr. COURSHON. In the first place, sir, the Congress apparently is not satisfied with the Administrative Procedure Act, and the Senate has already passed its version of the amendment to the Administrative Procedure Act, moving away from the substantial evidence rule. Why? Because they have found that the courts do not, because of that restriction, have the opportunity to get into the crux of the question of a man's ability.

The substantial evidence rule is what brings about indictments. Weight of the evidence beyond reasonable doubt is what brings about convictions. With the substantial evidence rule, you have sufficient evidence to indict somebody, not convict them, and this country is troubled with that.

Under section 5(d)2, under the present law, Congressman, as it now exists, with the right to move in with the supervisory representative in charge and take over our association, now, the law reads “weight of evidence.” So, S. 3158 that is before you would take away existing rights that this industry now has and flies in the face of the Administrative Procedure Act review as it is now taking place by the American Bar Association and by the Senate and, hopefully, by the House.

(The following pertinent provision contained in S. 1336, a Senate-passed bill referred to the Committee on the Judiciary on June 22, 1966, and apparently referred to above by Mr. Courshon follows:)

"(e) **SCOPE OF REVIEW.**—So far as necessary to decision, and where presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. It shall (A) compel agency action unlawfully withheld or unreasonably delayed; and (B) hold unlawful and set aside agency action, findings, and conclusions found to be (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; (5) unsupported by substantial evidence in any case subject to the requirements of sections 7 and 8 or otherwise reviewed on the record of any agency hearing provided by statute; or (6) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court. In making the foregoing determinations the court shall review the whole record or such portions thereof as may be cited by any party, and due account shall be taken of the rule of prejudicial error."

The Senate report, "Amending the Administrative Procedure Act," Senate Report No. 1234 (accompanying S. 1336) on pages 8 and 23 clearly indicates that S. 1336 (which has passed the Senate and has been referred to the House Committee on the Judiciary) makes no change in the Administrative Procedure Act section concerning the scope of judicial review. The precise language of the report is as follows:

"In the following pages the differences between the bill and the existing act are noted and explained to the extent that the revision is intended to work any change in the substance of the act. . . ."

* * * * *

"Section 10(e). *Scope of Review.*—The language of this subsection is that of the present statute." (pp. 8, 23.)

The CHAIRMAN. May I make a suggestion, Mr. Reuss?

Congressman Pepper wanted to explain his bill. He wanted 5 minutes to do so.

Mr. PEPPER. S. 3158 specifies the following as grounds for commencing cease-and-desist proceedings:

- (1) past, present, or reasonable expectation of future violation of law, rule, regulation, charter, or other written condition or written agreement with the Board;
- (2) past, present, or reasonable expectation of future unsafe or unsound practice.

Now, my new bill, H.R. 17900, simply specifies that there must be found a violation within the previous 2 years of either a law or a regulation. It gives something to review to the courts.

Now, then, the other essential differences are the things that we have been discussing here a while ago—

Mr. HARVEY. When you speak of regulations, are you talking of existing regulations or regulations to be enacted?

Mr. PEPPER. Oh, yes; I mean existing regulations, an existing rule or regulation of the Board.

Mr. HARVEY. At the time of enactment of this act here?

Mr. PEPPER. In other words, the man would not be convicted; the association would not be held to have violated a regulation that did not exist. He would be held on the regulation that exists or the law that exists.

As Mr. Courshon pointed out a minute ago, in respect to cease-and-desist orders, the Board would have authority to put into effect a cease-and-desist order whenever it found an emergency or situation to justify it.

For 60 days, the court would not have any right to interfere with that.

So that the Federal Home Loan Bank Board or the Federal Reserve Board in case of banks, and so on, would have authority to go in abruptly without even any notice and protect the institution and protect the public interest.

But, at the end of 60 days, the court, under my bill, would have the right to review all the facts relative to this matter before the matter were made permanent, in the case of a cease-and-desist order, and it could issue an injunction or could set aside or modify the cease-and-desist order and the weight of the evidence rule would prevail instead of the substantial evidence rule, as in the Senate bill.

In the case of the conservator, when the Federal Home Loan Bank Board of the Federal Reserve System found an institution that was in a precarious position, we have reinstated, which is not in the Senate bill, the supervisor in charge for taking care of an emergency situation. So, they can move right in without notice and take over the institution and hold it in status quo, operate it as they thought it should be operated, but before they put a permanent conservator in, they would have to have the authority of the court to do it.

These are the main differences, and the third essential difference—my bill does not give the right to remove an officer of a bank or of an association, because we feel that that is a dangerous power to give a board in Washington, to have the right to judge what it considered dishonesty without any adjudication of law, if there has been such a fact, and pick out any officer or director in any bank or association in the country and remove him.

We feel that can be done adequately under existing authority.

Mr. Chairman, I offer for the record a more detailed description of the differences between the Senate bill and my amended bill, H.R. 17900. Thank you, very much.

The CHAIRMAN. That may be inserted at this point in the record. (The information referred to follows:)

H.R. 17900, REVISED FINANCIAL INSTITUTIONS SUPERVISORY ACT OF 1966, TO SUPERSEDE H.R. 17703

I have introduced a clean bill dealing with the topic of supervisory powers of Federal regulatory agencies in the savings and loan and banking fields. This bill will bear the short title of the Financial Institutions Supervisory Act of 1966. I introduced a similar bill on this subject on September 13, 1966—H.R. 17703—concerning which I had the privilege of presenting testimony to the House Committee on Banking and Currency on September 20. That bill was also sent by the committee to interested Federal agencies for comment. It is in the light of those comments as well as some offered by my distinguished colleagues on the Committee on Banking and Currency and members of the savings and loan industry that I have decided to introduce the clean bill I am now offering.

This new bill would confer on the Federal regulatory agencies in the financial institution field more intermediate power than would H.R. 17703.

The major change in this respect is the introduction of authority for the regulatory agencies to issue temporary cease and desist orders in instances where they determine that a violation of law or regulation will jeopardize the

safety or soundness of a financial institution and that the more lengthy proceedings leading to a final cease and desist order will not adequately protect the assets of the institution. In such an event, the bill would empower the agency to issue without an administrative hearing a temporary order to cease and desist from the violation. The temporary order would take effect upon service and remain in effect until changed by the Federal agency or a court. To provide adequate safeguards to the institution affected by such an order, the bill would afford it the choice of requesting the agency for a full administrative hearing or of petitioning a Federal district court within 10 days after service of the order for review of the temporary order, provided the institution is complying with the order at the time it takes either course of action. The court would receive whatever record of proceedings existed at that time. The court would have jurisdiction to determine issues of law and fact and enter an appropriate judgment concerning the order. In order to meet the Federal Home Loan Bank Board's objection that under present law, a court can quickly set aside an order issued by the Board, the bill would prohibit the court from staying the operation of the temporary cease and desist order during the first 60 days after the court receives the institution's petition for review if the case is not disposed of within that period. In fairness to both parties to such a controversy, the case would be given preferential status in the court in order to expedite its settlement.

I should note that the bill will leave with the court its usual prerogative to hand down a judgment appropriate to the circumstances. This may include an injunction against further proceedings by the agency in the particular controversy involved. It appears to me that this is a fair division of authority, because it is the agency, not the institution or the court, that makes the decision to issue a temporary cease-and-desist order. Once the agency has made that decision in the preemptory fashion permitted it seems only fair to afford the institution involved opportunity to request further hearings before the agency or to transfer the controversy to the Federal court. In a regular cease-and-desist proceeding leading to a final cease-and-desist order following an administrative hearing, the bill provides no recourse to the courts for the institution until after service of the final cease-and-desist order.

The other major change made in this bill compared with H.R. 17703 is that dealing with appointment of conservators and receivers. The Federal Home Loan Bank Board raised objection to that portion of H.R. 17703 that would require the Board to obtain a Federal district court order before appointing a conservator or receiver to take control of a Federal savings and loan association.

Under present law, in an emergency the Board may appoint a supervisory representative in charge ex parte and without notice to the institution involved to take control of the institution for a limited period as specified in the law. As passed by the Senate, S. 3158 would abolish the post of supervisory representative in charge. In his place it would empower the Board to appoint a conservator or receiver ex parte and without notice to the institution involved, even in the absence of an emergency. The tenure of the conservator or receiver would be indefinite, not limited by statute, as is the tenure of a supervisory representative in charge.

The bill I am introducing would continue the procedure in Federal law for the Board itself to appoint a supervisory representative in charge ex parte and without notice for a limited tenure, if the Board determines that an emergency exists that requires immediate action.

Having provided this tool for the Board's use in an emergency situation, the bill retains the requirement of H.R. 17703 that a more permanent conservator or receiver be appointed only after the Board has demonstrated to a Federal district court that statutory grounds for such appointment exist. As the Board itself has noted, appointment of a conservator or receiver is a somewhat drastic remedy and should be embarked upon only after deliberate considerations with enough *prima facie* evidence to convince an unbiased member of the Federal judiciary that this drastic remedy is warranted.

With introduction of a procedure for issuance of temporary cease-and-desist orders, the bill dispenses with the procedure provided by H.R. 17703 that allowed an institution to apply to a Federal district court for an interlocutory injunction restraining Board action any time following service of a notice of a cease-and-desist proceeding.

The new bill also clarifies the continued exclusion of managerial functions from the operation of cease-and-desist orders by expressly pointing out that this is intended to refer to managerial functions as distinguished from

supervisory functions. It is my understanding that the Board makes no claim to any need for exercising management functions of a savings and loan association in order to accomplish the purposes of S. 3158 through the intermediate power tools the Board seeks to obtain. Managerial functions should remain with management, where they belong in an industry community oriented and operated as a private enterprise serving a public purpose. The area of actionable concern of the Federal regulatory agency should appropriately be limited to matters of supervisory functions. As has been noted in the past, the Board should act as the supervisor, not as the manager of the association.

The Board represents that S. 3158 "represents a conscientious effort to provide additional intermediate remedies to the supervisory agencies without sacrificing essential judicial safeguards for the rights of the institutions or of other persons concerned." I believe that the bill I am introducing will meet this test laid down by the Board insofar as any presently demonstrated need for such additional intermediate remedies is concerned.

My bill purposely omits provisions contained in S. 3158 that for the first time would empower the Board to suspend and remove officers, directors and certain other personnel of federally and State-chartered savings and loan associations. If the personnel involved is inept, management of the association will handle the problem in the normal course of business activity. If the personnel in rare instances is guilty of criminal offenses in connection with operation of the association, there exists a whole body of criminal law with adequate sanctions to punish those convicted of such offenses in accordance with the traditional Anglo-Saxon due process safeguards. I have yet to be convinced that the Federal Home Loan Bank Board requires any authority as to personnel that it cannot exert with due application of powers it presently possesses.

I believe that my bill will supply the Federal regulatory agencies in the financial field with the intermediate cease-and-desist powers they should have, while at the same time adequately safeguarding the rights of institutions and their personnel through opportunity for timely and adequate recourse to the judiciary.

Mr. TALCOTT. May I ask Senator Pepper a question?

Mr. PEPPER. One other thing our bill protects—as Mr. Burt emphasized yesterday—it protects the right of the State regulatory agencies to act, but provides if they do not act then the Federal authorities may act, but they are given the first opportunity to act with respect to the institution.

Of course, that is subject to a court review.

Mr. TALCOTT. Is your newest bill a composite or consensus of the views of all of you people?

Mr. SLIPHER. No; it is not.

Mr. PEPPER. Generally, that represents the view of the National League and those who have been working with it.

Mr. TALCOTT. Senator Pepper, how does your new bill affect the Federal agency if it decides to step in abruptly, like you suggested, preserving the status quo but knowing that some crook is involved in the savings and loan association, and prolonging the existence of the association until some favorite people can withdraw their money?

How can we prevent something like that?

Mr. PEPPER. I think, in the first place, all the Federal Home Loan Bank Board would have to do, if they found the conduct of an officer that was detrimental to the institution, was to tell that board, send them a letter or send an agent down there to visit them, advise them, or call an emergency meeting of the board of directors and say, "If you do not remove this officer immediately, we will put a supervisor or agent in charge, and they can do it the next day—in the next 10 minutes."

Mr. TALCOTT. How do we control the situation where the Federal agency does not want to remove the crook? It wants to permit the

crooks to stay in until some of the favorite investors get their money out?

Mr. PEPPER. If you assume that the Federal agency does not want to serve the public interest, then the only protection is afforded by local authorities and by the stockholders and members of the board of the association in question.

Mr. TALCOTT. Are you familiar with the San Francisco bank situation?

I am trying to give you an exact case of what happened.

Mr. PEPPER. The purpose of both these bills is to give authority to the Board, not to impose duties. They are the ones who have to determine what the facts are: whether it wants them to act.

Mr. COURSHON. May I amplify the Senator's answer?

In the Senator's bills, H.R. 17703 and H.R. 17900, there is proposed for the first time sanctions that involve dishonest people in the Government. That is not in this bill, Mr. Horne's bill.

The CHAIRMAN. We had agreed to go into executive session, but Mr. Rees, you go ahead.

Mr. REES. I wanted to ask a few questions on the House bill offered by Mr. Pepper.

Mr. COURSHON, may I ask a few questions?

Does H.R. 17703 give the Home Loan Bank Board any more power than already exists?

Mr. COURSHON. Yes, it gives the cease-and-desist order power. But H.R. 17900 does a better job.

Mr. REES. Do you take away the existing powers that the Home Loan Bank Board has at the present time?

Mr. COURSHON. It depends on who you ask. I have read with interest Chairman Horne's letter saying it does take it away, and in trying to meet that I believe Senator Pepper has abandoned H.R. 17703 and reintroduced H.R. 17900, and H.R. 17900 does not take away one power.

Mr. REES. What it does is add the power of issuing cease-and-desist orders?

Mr. COURSHON. Yes.

Mr. REES. But the Board does not have it at the present time?

Mr. COURSHON. It also restates the right to put a supervisory representative in charge. It goes further than the Board asks, sir, because it stays Federal court interference with those orders for 60 days. Even the Board, in its own bill, said "within 10 days," on a temporary cease-and-desist order, you go in for an injunction. We moved back from that position to give them more power than they asked for, as long as, in exchange for that, they can be found to be wrong if they are wrong.

Mr. REES. Do you increase their power in terms of appointing a conservator?

Mr. COURSHON. Yes, sir, because what we have done is we have brought back into H.R. 17900 the right, without notice, to put a supervisory representative in charge upon the finding of an emergency.

Mr. REES. I had other questions, Mr. Chairman, but in view of the hour I will yield my time.

The CHAIRMAN. Thank you. We will go into executive session—

Mr. MULTER. Before you release these witnesses, I would like to have a supply for the record as soon as possible—and also I would have Mr. Horne supply for the record as soon as possible—the

number of employees, officers, directors, and counsel of the Home Loan Bank Board who, in the last 2 years have taken employment with savings and loan associations, either as officers, directors, employees, counsel, or as agents or brokers.

Also, I would like to have supplied for the record if we can get it, as soon as possible, the number of persons so connected with the Government institutions, the Home Loan Bank Board or the home loan banks in any of those capacities who have indicated they will shortly become available to the savings and loan associations in any capacity whatsoever.

(The following information was submitted for the record:)

FEDERAL HOME LOAN BANK BOARD,
Washington, D.C., September 26, 1966.

HON. WRIGHT PATMAN,
Chairman, House Banking and Currency Committee,
House Office Building, Washington, D.C.

DEAR CHAIRMAN PATMAN: At the conclusion of the hearing on Thursday, September 22, 1966, on S. 8158, Congressman Multer requested the Board to supply for the record as soon as possible "the number of employees, officers, directors, and counsel of the Home Loan Bank Board who, in the last two years have taken employment with savings and loan associations, either as officers, directors, employees, counsel, or as agents or brokers" and "the number of persons so connected with the Government institutions, the Home Loan Bank Board or the Home Loan Banks in any of those capacities who have indicated they will shortly become available to the savings and loan associations in any capacity whatsoever" (the quotations are from the unrevised transcript of the hearing).

Information as to the activities of persons after they leave the employment of the Board or a Bank is not readily available. We are making inquiry of each of the Banks and of the various offices within the Board, and will furnish this information to the Committee as soon as it can be compiled.

With kind regards, I am

Sincerely yours,

MICHAEL GREENBERAUM,
Acting Chairman.

Mr. CLAWSON. Mr. Chairman?

The CHAIRMAN. Mr. Clawson.

Mr. CLAWSON. Before we dismiss them, is this procedure now going to close all the hearings?

The CHAIRMAN. We are just going to go into executive session to determine what we are going to do, whether we should have more hearings, when, and what action we should take.

We are trying to determine that today; otherwise, we are apt to have a session tomorrow, Friday, and it is a very difficult time. This is the reason we agreed with Mr. Widnall and other members we talked to, to have this executive session to find out what the situation is and to determine our future course.

Mr. CLAWSON. Mr. Bane has come in the hearing room since I made my statement.

The CHAIRMAN. We have his statement in the record.

Mr. CLAWSON. He would like to amplify that statement sometime in the future, if possible.

The CHAIRMAN. Let us have the room.

We thank the witnesses.

(Whereupon, at 10:45 a.m., the committee proceeded into executive session; to reconvene subject to the call of the Chair.)

(The Committee on Banking and Currency, in executive session, ordered H.R. 17899 reported to the House, with amendments, September 22, 1966. The bill, H.R. 17899, as reported, follows:)

Union Calendar No. 920

89TH CONGRESS
2D Session

H. R. 17899

[Report No. 2077]

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 21, 1966

Mr. PATMAN introduced the following bill; which was referred to the Committee on Banking and Currency

SEPTEMBER 24, 1966

Reported with amendments, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Omit the part struck through and insert the part printed in *italic*]

A BILL

To strengthen the regulatory and supervisory authority of Federal agencies over insured banks and insured savings and loan associations, to increase the maximum amount of insured accounts or deposits to \$15,000, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the "Financial Institutions
- 4 Supervisory Act of 1966".

I

1 TITLE I—PROVISIONS RELATING TO THE FED-
2 ERAL HOME LOAN BANK BOARD AND THE
3 FEDERAL SAVINGS AND LOAN INSURANCE
4 CORPORATION

5 SEC. 101. Subsection (d) of section 5 of the Home
6 Owners' Loan Act of 1933 (12 U.S.C. 1464 (d)) is hereby
7 amended to read as follows:

8 “(d) (1) The Board shall have power to enforce this
9 section and rules and regulations made hereunder. In the
10 enforcement of any provision of this section or rules and
11 regulations made hereunder, or any other law or regulation,
12 or in any other action, suit, or proceeding to which it is a
13 party or in which it is interested, and in the administration of
14 conservatorships and receiverships, the Board is authorized to
15 act in its own name and through its own attorneys. Except
16 as otherwise provided herein, the Board shall be subject to
17 suit (other than suits on claims for money damages) by any
18 Federal savings and loan association or director or officer
19 thereof with respect to any matter under this section or any
20 other applicable law, or rules or regulations thereunder, in
21 the United States district court for the judicial district in
22 which the home office of the association is located, or in
23 the United States District Court for the District of Columbia,
24 and the Board may be served with process in the manner
25 prescribed by the Federal Rules of Civil Procedure.

1 “(2) (A) If, in the opinion of the Board, an associa-
2 tion is violating or has violated, or the Board has reasonable
3 cause to believe that the association is about to violate, a law,
4 rule, regulation, or charter or other condition imposed in
5 writing by the Board or written agreement entered into
6 with the Board, or is engaging or has engaged, or the Board
7 has reasonable cause to believe that the association is about
8 to engage, in an unsafe or unsound practice, the Board
9 may issue and serve upon the association a notice of charges
10 in respect thereof. The notice shall contain a statement
11 of the facts constituting the alleged violation or violations
12 or the unsafe or unsound practice or practices, and shall
13 fix a time and place at which a hearing will be held to
14 determine whether an order to cease and desist therefrom
15 should issue against the association. Such hearing shall be
16 fixed for a date not earlier than thirty days nor later than
17 sixty days after service of such notice unless an earlier or a
18 later date is set by the Board at the request of the association.
19 Unless the association shall appear at the hearing by a duly
20 authorized representative, it shall be deemed to have con-
21 sented to the issuance of the cease-and-desist order. In the
22 event of such consent, or if upon the record made at any such
23 hearing the Board shall find that any violation or unsafe or
24 unsound practice specified in the notice of charges has been
25 established, the Board may issue and serve upon the associa-

1 tion an order to cease and desist from any such violation or
2 practice. Such order may, by provisions which may be man-
3 datory or otherwise, require the association and its directors,
4 officers, employees, and agents to cease and desist from the
5 same, and, further, to take affirmative action to correct the
6 conditions resulting from any such violation or practice.

7 “(B) A cease-and-desist order shall become effective
8 at the expiration of thirty days after service of such order
9 upon the association concerned (except in the case of a
10 cease-and-desist order issued upon consent, which shall be-
11 come effective at the time specified therein), and shall
12 remain effective and enforceable, except to such extent as
13 it is stayed, modified, terminate, or set aside by action of
14 the Board or a reviewing court.

15 “(3) (A) Whenever the Board shall determine that
16 the violation or threatened violation or the unsafe or unsound
17 practice or practices, specified in the notice of charges served
18 upon the association pursuant to paragraph (2) (A) of this
19 subsection, or the continuation thereof, is likely to cause insol-
20 vency (as defined in paragraph (6) (A) (i) of this subsec-
21 tion) or substantial dissipation of assets or earnings of the
22 association, or is likely to otherwise seriously prejudice the
23 interests of its savings account holders, the Board may issue
24 a temporary order requiring the association to cease and
25 desist from any such violation or practice. Such order shall

1 become effective upon service upon the association and, unless
2 set aside, limited, or suspended by a court in proceedings
3 authorized by subparagraph (B) of this paragraph, shall
4 remain effective and enforceable pending the completion of
5 the administrative proceedings pursuant to such notice and
6 until such time as the Board shall dismiss the charges speci-
7 fied in such notice or, if a cease-and-desist order is issued
8 against the association, until the effective date of any such
9 order.

10 “(B) Within ten days after the association concerned
11 has been served with a temporary cease-and-desist order, the
12 association may apply to the United States district court for
13 the judicial district in which the home office of the associa-
14 tion is located, or the United States District Court for the
15 District of Columbia, for an injunction setting aside, limiting,
16 or suspending the enforcement, operation, or effectiveness
17 of such order pending the completion of the administrative
18 proceedings pursuant to the notice of charges served upon
19 the association under paragraph (2) (A) of this subsection,
20 and such court shall have jurisdiction to issue such injunction.

21 “(C) In the case of violation or threatened violation of,
22 or failure to obey, a temporary cease-and-desist order, the
23 Board may apply to the United States district court, or the
24 United States court of any territory, within the jurisdiction
25 of which the home office of the association is located, for an

1 injunction to enforce such order, and, if the court shall de-
2 termine that there has been such violation or threatened
3 violation or failure to obey, it shall be the duty of the court
4 to issue such injunction.

5 “(4) (A) Whenever, in the opinion of the Board, any
6 director or officer of an association has committed any viola-
7 tion of law, rule, or regulation, or of a cease-and-desist order
8 which has become final, or has engaged or participated in
9 any unsafe or unsound practice in connection with the as-
10 sociation, or has committed or engaged in any act, omission,
11 or practice which constitutes a breach of his fiduciary duty
12 as such director or officer, and the Board determines that the
13 association has suffered or will probably suffer substantial
14 financial loss or other damage or that the interests of its
15 savings account holders could be seriously prejudiced by rea-
16 son of such violation or practice or breach of fiduciary duty.
17 and that such violation or practice or breach of fiduciary
18 duty is one involving personal dishonesty on the part of such
19 director or officer, the Board may serve upon such director
20 or officer a written notice of its intention to remove him from
21 office.

22 “(B) Whenever, in the opinion of the Board, any
23 director or officer of an association, by conduct or practice
24 with respect to another savings and loan association or other
25 business institution which resulted in substantial financial

1 loss or other damage, has evidenced his personal dishonesty
2 and unfitness to continue as a director or officer, and, when-
3 ever, in the opinion of the Board, any other person par-
4 ticipating in the conduct of the affairs of an association, by
5 conduct or practice with respect to such association or other
6 savings and loan association or other business institution
7 which resulted in substantial financial loss or other damage,
8 has evidenced his personal dishonesty and unfitness to par-
9 ticipate in the conduct of the affairs of such association,
10 the Board may serve upon such director, officer, or other
11 person a written notice of its intention to remove him from
12 office and/or to prohibit his further participation in any
13 manner in the conduct of the affairs of such association.

14 “(C) In respect to any director or officer of an associa-
15 tion or any other person referred to in subparagraph (A) or
16 (B) of this paragraph, the Board may, if it deems it neces-
17 sary for the protection of the association or the interests of
18 its savings account holders, by written notice to such effect
19 served upon such director, officer, or other person, suspend
20 him from office and/or prohibit him from further participa-
21 tion in any manner in the conduct of the affairs of the asso-
22 ciation. Such suspension and/or prohibition shall become
23 effective upon service of such notice and, unless stayed by a
24 court in proceedings authorized by subparagraph (E) of this

1 paragraph, shall remain in effect pending the completion of
2 the administrative proceedings pursuant to the notice served
3 under subparagraph (A) or (B) of this paragraph and until
4 such time as the Board shall dismiss the charges specified in
5 such notice, or, if an order of removal and/or prohibition is
6 issued against the director or officer or other person, until
7 the effective date of any such order. Copies of any such
8 notice shall also be served upon the association of which he
9 is a director or officer or in the conduct of whose affairs he
10 has participated.

11 “(D) A notice of intention to remove a director, officer,
12 or other person from office and/or to prohibit his participa-
13 tion in the conduct of the affairs of an association, shall con-
14 tain a statement of the facts constituting grounds therefor, and
15 shall fix a time and place at which a hearing will be held
16 thereon. Such hearing shall be fixed for a date not earlier
17 than thirty days nor later than sixty days after the date of
18 service of such notice, unless an earlier or a later date is set
19 by the Board at the request of (i) such director, officer, or
20 other person, and for good cause shown, or (ii) the Attorney
21 General of the United States. Unless such director, officer, or
22 other person shall appear at the hearing in person or by a
23 duly authorized representative, he shall be deemed to have
24 consented to the issuance of an order of such removal and/or
25 prohibition. In the event of such consent, or if upon the

1 record made at any such hearing the Board shall find that
2 any of the grounds specified in such notice has been estab-
3 lished, the Board may issue such orders of suspension or
4 removal from office, and/or prohibition from participation in
5 the conduct of the affairs of the association, as it may deem
6 appropriate. Any such order shall become effective at the
7 expiration of thirty days after service upon such association
8 and the director, officer, or other person concerned (except
9 in the case of an order issued upon consent, which shall be-
10 come effective at the time specified therein). Such order
11 shall remain effective and enforceable except to such extent
12 as it is stayed, modified, terminated, or set aside by action of
13 the Board or a reviewing court.

14 “ (E) Within ten days after any director, officer, or other
15 person has been suspended from office and/or prohibited from
16 participation in the conduct of the affairs of an association
17 under subparagraph (C) of this paragraph, such director,
18 officer, or other person may apply to the United States
19 district court for the judicial district in which the home office
20 of the association is located, or the United States District
21 Court for the District of Columbia, for a stay of such suspen-
22 sion and/or prohibition pending the completion of the ad-
23 ministrative proceedings pursuant to the notice served upon
24 such director, officer, or other person under subparagraph

1 (A) or (B) of this paragraph, and such court shall have
2 jurisdiction to stay such suspension and/or prohibition.

3 “(5) (A) Whenever any director or officer of an asso-
4 ciation, or other person participating in the conduct of the
5 affairs of such association, is charged in any information,
6 indictment, or complaint authorized by a United States
7 Attorney, with the commission of or participation in a
8 felony involving dishonesty or breach of trust, the Board
9 may, by written notice served upon such director, officer, or
10 other person, suspend him from office and/or prohibit him
11 from further participation in any manner in the conduct of
12 the affairs of the association. A copy of such notice shall
13 also be served upon the association. Such suspension and/or
14 prohibition shall remain in effect until such information
15 indictment, or complaint is finally disposed of or until termi-
16 nated by the Board. In the event that a judgment of con-
17 viction with respect to such offense is entered against such di-
18 rector, officer, or other person, and at such time as such judg-
19 ment is not subject to further appellate review, the Board may
20 issue and serve upon such director, officer, or other person an
21 order removing him from office and/or prohibiting him from
22 further participation in any manner in the conduct of the
23 affairs of the association except with the consent of the Board.
24 A copy of such order shall be served upon such association,
25 whereupon such director or officer shall cease to be a director

1 or officer of such association. A finding of not guilty or other
2 disposition of the charge shall not preclude the Board from
3 thereafter instituting proceedings to remove such director,
4 officer, or other person from office and/or to prohibit further
5 participation in association affairs, pursuant to subpara-
6 graph (A) or (B) of paragraph (4) of this subsection.

7 “(B) If at any time, because of the suspension of one
8 or more directors pursuant to this subsection (d), there shall
9 be on the board of directors of an association less than a
10 quorum of directors not so suspended, all powers and func-
11 tions vested in or exercisable by such board shall vest in
12 and be exercisable by the director or directors on the board
13 and not so suspended, until such time as there shall be a
14 quorum of the board of directors. In the event all of the
15 directors of an association are suspended pursuant to this
16 subsection (d), the Board shall appoint persons to serve
17 temporarily as directors in their place and stead pending
18 the termination of such suspensions, or until such time as
19 those who have been suspended cease to be directors of the
20 association and their respective successors take office.

21 “(6) (A) The grounds for the appointment of a con-
22 servator or receiver for an association shall be one or more
23 of the following: (i) insolvency in that the assets of the
24 association are less than its obligations to its creditors and
25 others, including its members; (ii) substantial dissipation

1 of assets or earnings due to any violation or violations of law,
2 rules, or regulations, or to any unsafe or unsound practice
3 or practices; (iii) an unsafe or unsound condition to transact
4 business; (iv) willful violation of a cease-and-desist order
5 which has become final; (v) concealment of books, papers,
6 records, or assets of the association or refusal to submit
7 books, papers, records, or affairs of the association for in-
8 spection to any examiner or to any lawful agent of the
9 Board. The Board shall have exclusive power and juris-
10 diction to appoint a conservator or receiver. If, in the
11 opinion of the Board, a ground for the appointment of a
12 conservator or receiver as herein provided exists, the Board
13 is authorized to appoint ex parte and without notice a con-
14 servator or receiver for the association. In the event of
15 such appointment, the association may, within thirty days
16 thereafter, bring an action in the United States district
17 court for the judicial district in which the home office of such
18 association is located, or in the United States District Court
19 for the District of Columbia, for an order requiring the
20 Board to remove such conservator or receiver, and the court
21 shall upon the merits dismiss such action or direct the Board
22 to remove such conservator or receiver. Such proceedings
23 shall be given precedence over other cases pending in such
24 courts, and shall be in every way expedited. Upon the
25 commencement of such an action, the court having jurisdic-

tion of any other action or proceeding authorized under this subsection to which the association is a party shall stay such action or proceeding during the pendency of the action for removal of the conservator or receiver.

“(B) In addition to the foregoing provisions, the Board may, without any requirement of notice, hearing, or other action, appoint a conservator or receiver for an association in the event that (i) the association, by resolution of its board of directors or of its members, consents to such appointment, or (ii) the association is removed from membership in any Federal home loan bank, or its status as an institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation is terminated.

“(C) Except as otherwise provided in this subsection, no court may take any action for or toward the removal of any conservator or receiver, or, except at the instance of the Board, restrain or affect the exercise of powers or functions of a conservator or receiver.

“(D) A conservator shall have all the powers of the members, the directors, and the officers of the association and shall be authorized to operate the association in its own name or to conserve its assets in the manner and to the extent authorized by the Board. The Board shall appoint only the Federal Savings and Loan Insurance Corporation as receiver for an association, and said Corporation shall have

1 power to buy at its own sale as receiver, subject to approval
2 by the Board. The Board may, without any requirement of
3 notice, hearing, or other action, replace a conservator with
4 another conservator or with a receiver, but any such replace-
5 ment shall not affect any right which the association may
6 have to obtain judicial review of the original appointment,
7 except that any removal under this paragraph (6) shall be
8 removal of the conservator or receiver in office at the time
9 of such removal.

10 “(7) (A) Any hearing provided for in this subsection
11 (d) shall be held in the Federal judicial district or in the
12 territory in which the home office of the association is located
13 unless the party afforded the hearing consents to another
14 place, and shall be conducted in accordance with the pro-
15 visions of the ~~Administrative Procedure Act~~; but such hear-
16 ing shall be private, unless a public hearing is agreed to
17 by the party afforded the hearing and by the Board chapter
18 5 of title 5 of the United States Code. Such hearing shall
19 be public, unless the Board, in its discretion, after con-
20 sidering the views of the party afforded the hearing, de-
21 termines that a private hearing would be in the public
22 interest. After such hearing, and within ninety days after
23 the Board has notified the parties that the case has been sub-
24 mitted to it for final decision, the Board shall render its
25 decision (which shall include findings of fact upon which its

1 decision is predicated) and shall issue and cause to be served
2 upon each party to the proceeding an order or orders con-
3 sistent with the provisions of this subsection. Judicial re-
4 view of any such order shall be exclusively as provided in
5 this paragraph (7). Unless a petition for review is timely
6 filed in a court of appeals of the United States, as hereinafter
7 provided in subparagraph (B) of this paragraph, and there-
8 after until the record in the proceeding has been filed as so
9 provided, the Board may at any time, upon such notice and
10 in such manner as it shall deem proper, modify, terminate,
11 or set aside any such order. Upon such filing of the record,
12 the Board may modify, terminate, or set aside any such
13 order with permission of the court.

14 “(B) Any party to the proceeding, or any person
15 required by an order issued under this subsection to cease
16 and desist from any of the violations or practices stated
17 therein, may obtain a review of any order served pursuant
18 to subparagraph (A) of this paragraph (other than an order
19 issued with the consent of the association or the director or
20 officer or other person concerned, or an order issued under
21 paragraph (5) (A) of this subsection), by filing in the
22 court of appeals of the United States for the circuit in which
23 the home office of the association is located, or in the United
24 States Court of Appeals for the District of Columbia Circuit,
25 within thirty days after the date of service of such order, a

1 written petition praying that the order of the Board be mod-
2 ified, terminated, or set aside. A copy of such petition shall
3 be forthwith transmitted by the clerk of the court to the
4 Board, and thereupon the Board shall file in the court the
5 record in the proceeding, as provided in section 2112 of
6 title 28 of the United States Code. Upon the filing of such
7 petition, such court shall have jurisdiction, which upon the
8 filing of the record shall except as provided in the last
9 sentence of said subparagraph (A) be exclusive, to affirm,
10 modify, terminate, or set aside, in whole or in part, the
11 order of the Board. Review of such proceedings shall be
12 had as provided in ~~the Administrative Procedure Act~~ chapter
13 7 of title 5 of the United States Code, except that in cases
14 referred to in section 706(2)(E) of that title, the court shall,
15 in lieu of the rule set forth in that section, set aside agency
16 action, findings, and conclusions found to be unsupported
17 by the weight of the evidence. The judgment and decree
18 of the court shall be final, except that the same shall be
19 subject to review by the Supreme Court upon certiorari as
20 provided in section 1254 of title 28 of the United States
21 Code.

22 “(C) The commencement of proceedings for judicial
23 review under subparagraph (B) of this paragraph shall not,
24 unless specifically ordered by the court, operate as a stay of
25 any order issued by the Board.

1 “(8) The Board may in its discretion apply to the
2 United States district court, or the United States court of any
3 territory, within the jurisdiction of which the home office of
4 the association is located, for the enforcement of any effective and outstanding notice or order issued by the Board
5 under this subsection (d), and such courts shall have jurisdiction and power to order and require compliance therewith;
6 but except as otherwise provided in this subsection no court
7 shall have jurisdiction to affect by injunction or otherwise the
8 issuance or enforcement of any notice or order under this
9 subsection, or to review, modify, suspend, terminate, or set
10 aside any such notice or order. Any court having jurisdiction
11 of any proceeding instituted under this subsection by an
12 association or a director or officer thereof, may allow to any
13 such party such reasonable expenses and attorneys’ fees as
14 it deems just and proper; and such expenses and fees shall
15 be paid by the association or from its assets.

16 “(9) In the course of or in connection with any proceeding under this subsection, the Board or any member
17 thereof or a designated representative of the Board, including
18 any person designated to conduct any hearing under this
19 subsection, shall have power to administer oaths and affirmations, to take or cause to be taken depositions, and to issue,
20 revoke, quash, or modify subpoenas and subpoenas duces tecum;

1 and the Board is empowered to make rules and regulations
2 with respect to any such proceedings. The attendance of
3 witnesses and the production of documents provided for in
4 this paragraph may be required from any place in any State
5 or in any territory at any designated place where such pro-
6 ceeding is being conducted. Any party to proceedings under
7 this subsection may apply to the United States District Court
8 for the District of Columbia, or the United States district
9 court for the judicial district or the United States court in
10 any territory in which such proceeding is being conducted or
11 where the witness resides or carries on business, for enforce-
12 ment of any subpoena or subpoena duces tecum issued pursuant
13 to this paragraph, and such courts shall have jurisdiction and
14 power to order and require compliance therewith. Wit-
15 nesses subpoenaed under this paragraph shall be paid the same
16 fees and mileage that are paid witnesses in the district courts
17 of the United States. All expenses of the Board or of the
18 Federal Savings and Loan Insurance Corporation in connec-
19 tion with this subsection shall be considered as nonadminis-
20 trative expenses.

21 “(10) Any service required or authorized to be made
22 by the Board under this subsection may be made by regis-
23 tered mail, or in such other manner reasonably calculated to
24 give actual notice as the Board may by regulation or other-
25 wise provide.

1 “(11) The Board shall have power to make rules and
2 regulations for the reorganization, consolidation, liquidation,
3 and dissolution of associations, for the merger of associations
4 with other institutions the accounts of which are insured by
5 the Federal Savings and Loan Insurance Corporation, for
6 associations in conservatorship and receivership, and for the
7 conduct of conservatorships and receiverships; and the Board
8 may, by regulation or otherwise, provide for the exercise of
9 functions by members, directors, or officers of an association
10 during conservatorship and receivership.

11 “(12) (A) Any director or officer, or former director
12 or officer, of an association, or any other person, against
13 whom there is outstanding and effective any notice or order
14 (which is an order which has become final) served upon
15 such director, officer, or other person under paragraph (4)
16 (C), (4) (D), or (5) (A) of this subsection, and who
17 (i) participates in any manner in the conduct of the affairs
18 of such association, or directly or indirectly solicits or pro-
19 cures, or transfers or attempts to transfer, or votes or at-
20 tempts to vote any proxies, consents, or authorizations in
21 respect of any voting rights in such association, or (ii)
22 without the prior written approval of the Board, votes for
23 a director or serves or acts as a director, officer, or employee
24 of any institution the accounts of which are insured by the
25 Federal Savings and Loan Insurance Corporation, shall

1 upon conviction be fined not more than \$5,000 or imprisoned
2 for not more than one year, or both.

3 “(B) Except with the prior written consent of the
4 Board, no person shall serve as a director, officer, or employee
5 of an association who has been convicted, or who is hereafter
6 convicted, of a criminal offense involving dishonesty or a
7 breach of trust. For each willful violation of this prohibition,
8 the association involved shall be subject to a penalty of not
9 more than \$100 for each day this prohibition is violated,
10 which the Board may recover by suit or otherwise for its
11 own use.

12 “(C) Whenever a conservator or receiver appointed by
13 the Board demands possession of the property, business, and
14 assets of any association, or of any part thereof, the refusal
15 by any director, officer, employee, or agent of such associa-
16 tion to comply with the demand shall be punishable by a
17 fine of not more than \$5,000 or imprisonment for not more
18 than one year, or both.

19 “(13) (A) As used in this subsection—

20 “(1) The terms ‘cease-and-desist order which has be-
21 come final’ and ‘order which has become final’ mean a cease-
22 and-desist order, or an order, issued by the Board with the
23 consent of the association or the director or officer or other
24 person concerned, or with respect to which no petition for
25 review of the action of the Board has been filed and per-

1 fected in a court of appeals as specified in paragraph (7)
2 (B) of this subsection, or with respect to which the action
3 of the court in which said petition is so filed is not subject to
4 further review by the Supreme Court of the United States
5 in proceedings provided for in said paragraph, or an order
6 issued under paragraph (5) (A) of this subsection.

7 “(2) The term ‘territory’ includes the Commonwealth
8 of Puerto Rico, and any possession of the United States
9 or any place subject to the jurisdiction of the United States.

10 “(B) As used in paragraph (4) of this subsection,
11 the term ‘violation’ includes without limitation any action
12 (alone or with another or others) for or toward causing,
13 bringing about, participating in, counseling, or aiding or
14 abetting a violation.

15 “(14) As used in this subsection, the terms ‘Federal
16 savings and loan association’ and ‘association’ shall include
17 any institution with respect to which the Federal Home
18 Loan Bank Board now or hereafter has any statutory power
19 of examination or supervision under any Act or joint
20 resolution of Congress other than this Act, the Federal
21 Home Loan Bank Act, and the National Housing Act.
22 For the purposes of this paragraph (14), references in
23 this subsection to directors, officers, employees, and agents,
or to former directors or officers, of associations shall be

1 deemed to be references respectively to directors, officers,
2 employees, and agents, or to former directors or officers, of
3 such institutions, references therein to savings account hold-
4 ers and to members of associations shall be deemed to be
5 references to holders of withdrawable accounts in such in-
6 stitutions, and references therein to boards of directors of
7 associations shall be deemed to be references to boards of
8 directors or other governing boards of such institutions.
9 Said Board shall have power by regulation to define, for
10 the purposes of this paragraph (14), terms used or referred
11 to in the sentence next preceding and other terms used in
12 this subsection.

13 “(15) The provisions of this subsection, as amended by
14 the amendment by which this sentence is added, shall not be
15 applicable to or with respect to any proceeding for the ap-
16 pointment of a conservator or receiver pending immediately
17 prior to the effective date of said amendment or any con-
18 servator or receiver appointed as a result of such proceeding,
19 or to or with respect to any supervisory representative in
20 charge, conservator, or receiver in office immediately prior to
21 said date, or any successor of any of the same, or to the
22 appointment of any such successor, and the provisions of this
23 subsection as in effect immediately prior to said date shall be
24 and remain applicable to all of the foregoing.”

1 SEC. 102. Section 407 of the National Housing Act (12
2 U.S.C. 1730) is hereby amended to read as follows:

3 “SEC. 407. TERMINATION OF INSURANCE AND EN-
4 FORCEMENT PROVISIONS.—

5 “(a) VOLUNTARY TERMINATION OF INSURANCE.—

6 Any insured institution other than a Federal savings and
7 loan association may terminate its status as an insured insti-
8 tution by written notice to the Corporation specifying a date
9 for such termination.

10 “(b) INVOLUNTARY TERMINATION OF INSURANCE;

11 NOTICE AND HEARING.—(1) Whenever, in the opinion of
12 the Corporation, any insured institution has violated its duty
13 as such or is engaging or has engaged in an unsafe or un-
14 sound practice in conducting the business of such institution,
15 or is in an unsafe or unsound condition to continue operations
16 as an insured institution, or is violating or has violated an
17 applicable law, rule, regulation, or order, or any condition
18 imposed in writing by the Corporation or any written agree-
19 ment entered into with the Corporation, including any agree-
20 ment entered into under section 403 of this title, the Cor-
21 poration shall serve upon the institution a statement with
22 respect to such violations or practices or conditions for the
23 purpose of securing the correction thereof, and shall send

1 a copy of such statement to the appropriate State supervisory
2 authority.

3 “(2) Unless such correction shall be made within one
4 hundred and twenty days after service of such statement,
5 or such shorter period of not less than twenty days after
6 such service as (A) the Corporation shall require in any
7 case where the Corporation determines that its insurance
8 risk with respect to such institution could be unduly jeop-
9 arded by further delay in the correction of such violations
10 or practices or conditions, or (B) the appropriate State
11 supervisory authority shall require, or unless within such
12 time the Corporation shall have received acceptable assur-
13 ances that such correction will be made within a time and
14 in a manner satisfactory to the Corporation, or in the event
15 such assurances are submitted to and accepted by the Corpo-
16 ration but are not carried out in accordance with their terms,
17 the Corporation may, if it shall determine to proceed fur-
18 ther, issue and serve upon the institution written notice of
19 intention to terminate the status of the institution as an
20 insured institution.

21 “(3) Such notice shall contain a statement of the facts
22 constituting the alleged violation or violations or the unsafe
23 or unsound practice or practices or condition, and shall fix
24 a time and place for a hearing thereon. Such hearing shall
25 be fixed for a date not earlier than thirty days after service

1 of such notice. Unless the institution shall appear at the
2 hearing by a duly authorized representative, it shall be
3 deemed to have consented to the termination of its status
4 as an insured institution. In the event of such consent, or
5 if upon the record made at any such hearing the Corpora-
6 tion shall find that any violation or unsafe or unsound
7 practice or condition specified in such notice has been estab-
8 lished and has not been corrected within the time above
9 prescribed in which to make correction, the Corporation
10 may issue and serve upon the institution an order terminating
11 the status of the institution as an insured institution; but
12 any such order shall not become effective until it is an order
13 which has become final (except in the case of an order of
14 termination issued upon consent, which shall become effec-
15 tive at the time specified therein).

16 “(c) DATE OF TERMINATION OF INSURED STATUS.—
17 The effective date of the termination of an institution’s status
18 as an insured institution under the foregoing provisions of
19 this section shall be the date specified for such termination
20 in the notice by the institution to the Corporation as pro-
21 vided in subsection (a) of this section, or the date upon
22 which an order of termination issued under subsection
23 (b) (3) of this section becomes effective. The Corporation
24 may from time to time postpone the effective date of the

1 termination of an institution's status as an insured institution
2 at any time before such termination has become effective,
3 but in the case of termination by notice given by the institu-
4 tion such effective date shall be postponed only with the
5 written consent of the institution.

6 “(d) CONTINUATION OF INSURANCE; EXAMINATION;
7 NOTICE TO MEMBERS; AND PAYMENT OF PREMIUMS.—In
8 the event of the termination of an institution's status as an
9 insured institution, insurance of its accounts to the extent
10 that they were insured on the effective date of such termina-
11 tion as hereinabove provided in subsection (c), less any
12 amounts thereafter withdrawn, repurchased, or redeemed,
13 shall continue for a period of two years, but no investments
14 or deposits made after such date shall be insured. The Cor-
15 poration shall have the right to examine such institution
16 from time to time during the two-year period aforesaid.
17 Such insured institution shall be obligated to pay, within
18 thirty days after the effective date of such termination, as a
19 final insurance premium, a sum equivalent to twice the last
20 annual insurance premium payable by it. In the event of
21 the termination of insurance of accounts as herein provided
22 the institution which was the insured institution shall give
23 prompt and reasonable notice to all of its insured members
24 that it has ceased to be an insured institution and it may
25 include in such notice the fact that insured accounts, to the

1 extent not withdrawn, repurchased, or redeemed, remain
2 insured for two years from the date of such termination, but
3 it shall not further represent itself in any manner as an
4 insured institution. In the event of failure to give the
5 notice to insured members as herein provided the Corpora-
6 tion is authorized to give reasonable notice.

7 “(e) CEASE-AND-DESIST PROCEEDINGS.—(1) If, in the
8 opinion of the Corporation, any insured institution or any
9 institution any of the accounts of which are insured is en-
10 gaging or has engaged, or the Corporation has reasonable
11 cause to believe that the institution is about to engage, in an
12 unsafe or unsound practice in conducting the business of such
13 institution, or is violating or has violated, or the Corporation
14 has reasonable cause to believe that the institution is about
15 to violate, a law, rule, or regulation, or any condition imposed
16 in writing by the Corporation or written agreement entered
17 into with the Corporation, including any agreement entered
18 into under section 403 of this title, the Corporation may issue
19 and serve upon the institution a notice of charges in respect
20 thereof. The notice shall contain a statement of the facts con-
21 stituting the alleged violation or violations or the unsafe or
22 unsound practice or practices, and shall fix a time and place
23 at which a hearing will be held to determine whether an
24 order to cease and desist therefrom should issue against the

1 institution. Such hearing shall be fixed for a date not earlier
2 than thirty days nor later than sixty days after service of such
3 notice unless an earlier or a later date is set by the Corpora-
4 tion at the request of the institution. Unless the institution
5 shall appear at the hearing by a duly authorized representa-
6 tive, it shall be deemed to have consented to the issuance of
7 the cease-and-desist order. In the event of such consent, or
8 if upon the record made at any such hearing the Corporation
9 shall find that any violation or unsafe or unsound practice
10 specified in the notice of charges has been established, the
11 Corporation may issue and serve upon the institution an
12 order to cease and desist from any such violation or practice.
13 Such order may, by provisions which may be mandatory or
14 otherwise, require the institution and its directors, officers,
15 employees, and agents to cease and desist from the same,
16 and, further, to take affirmative action to correct the condi-
17 tions resulting from any such violation or practice.

18 “(2) A cease-and-desist order shall become effective
19 at the expiration of thirty days after service of such order
20 upon the institution concerned (except in the case of a cease-
21 and-desist order issued upon consent, which shall become
22 effective at the time specified therein), and shall remain effec-
23 tive and enforceable except to such extent as it is stayed,
24 modified, terminated, or set aside by action of the Corpora-
25 tion or a reviewing court.

1 “(f) **TEMPORARY CEASE-AND-DESIST ORDERS.—**(1)
2 Whenever the Corporation shall determine that the violation
3 or threatened violation or the unsafe or unsound practice or
4 practices, specified in the notice of charges served upon the
5 institution pursuant to subsection (e) (1) of this section, or
6 the continuation thereof, is likely to cause insolvency or sub-
7 stantial dissipation of assets or earnings of the institution, or
8 is likely to otherwise seriously prejudice the interest of its
9 insured members or of the Corporation, the Corporation may
10 issue a temporary order requiring the institution to cease and
11 desist from any such violation or practice. Such order shall
12 become effective upon service upon the institution and, unless
13 set aside, limited, or suspended by a court in proceedings
14 authorized by paragraph (2) of this subsection, shall remain
15 effective and enforceable pending the completion of the ad-
16 ministrative proceedings pursuant to such notice and until
17 such time as the Corporation shall dismiss the charges speci-
18 fied in such notice or, if a cease-and-desist order is issued
19 against the institution, until the effective date of any such
20 order.

21 “(2) Within ten days after the institution concerned
22 has been served with a temporary cease-and-desist order,
23 the institution may apply to the United States district court
24 for the judicial district in which the principal office of the

1 institution is located, or the United States District Court for
2 the District of Columbia, for an injunction setting aside,
3 limiting, or suspending the enforcement, operation, or ef-
4 fectiveness of such order pending the completion of the ad-
5 ministrative proceedings pursuant to the notice of charges
6 served upon the institution under subsection (e) (1) of this
7 section, and such court shall have jurisdiction to issue such
8 injunction.

9 “(3) In the case of violation or threatened violation
10 of, or failure to obey, a temporary cease-and-desist order, the
11 Corporation may apply to the United States district court,
12 or the United States court of any territory, within the juris-
13 diction of which the principal office of the institution is
14 located, for an injunction to enforce such order, and, if the
15 court shall determine that there has been such violation or
16 threatened violation or failure to obey, it shall be the duty
17 of the court to issue such injunction.

18 “(g) SUSPENSION OR REMOVAL OF DIRECTOR OR OFFI-
19 CER.—(1) Whenever, in the opinion of the Corporation,
20 any director or officer of an insured institution has committed
21 any violation of law, rule, or regulation, or of a cease-and-
22 desist order which has become final, or has engaged or par-
23 ticipated in any unsafe or unsound practice in connection
24 with the institution, or has committed or engaged in any
25 act, omission, or practice which constitutes a breach of his

1 fiduciary duty as such director or officer, and the Corporation
2 determines that the institution has suffered or will probably
3 suffer substantial financial loss or other damage or that the
4 interests of its insured members could be seriously prejudiced
5 by reason of such violation or practice or breach of fiduciary
6 duty, and that such violation or practice or breach of fidu-
7 ciary duty is one involving personal dishonesty on the
8 part of such director or officer, the Corporation may serve
9 upon such director or officer a written notice of its intention
10 to remove him from office.

11 “(2) Whenever, in the opinion of the Corporation, any
12 director or officer of an insured institution, by conduct or
13 practice with respect to another insured institution or other
14 business institution which resulted in substantial financial loss
15 or other damage, has evidenced his personal dishonesty and
16 unfitness to continue as a director or officer, and, whenever,
17 in the opinion of the Corporation, any other person partic-
18 ipating in the conduct of the affairs of an insured institution.
19 by conduct or practice with respect to such institution or other
20 insured institution or other business institution which resulted
21 in substantial financial loss or other damage, has evidenced
22 his personal dishonesty and unfitness to participate in the
23 conduct of the affairs of such insured institution, the Corpo-
24 ration may serve upon such director, officer, or other person
25 a written notice of its intention to remove him from office

1 and/or to prohibit his further participation in any manner in
2 the conduct of the affairs of such institution.

3 “(3) In respect to any director or officer of an insured
4 institution or any other person referred to in paragraph (1)
5 or (2) of this subsection, the Corporation may, if it deems it
6 necessary for the protection of the institution or the interests
7 of its insured members or of the Corporation, by written
8 notice to such effect served upon such director, officer, or
9 other person, suspend him from office and/or prohibit him
10 from further participation in any manner in the conduct of
11 the affairs of the institution. Such suspension and/or pro-
12 hibition shall become effective upon service of such notice
13 and, unless stayed by a court in proceedings authorized by
14 paragraph (5) of this subsection, shall remain in effect
15 pending the completion of the administrative proceedings
16 pursuant to the notice served under paragraph (1) or (2)
17 of this subsection and until such time as the Corporation shall
18 dismiss the charges specified in such notice, or, if an order
19 of removal and/or prohibition is issued against the director
20 or officer or other person, until the effective date of any such
21 order. Copies of any such notice shall also be served upon
22 the institution of which he is a director or officer or in the
23 conduct of whose affairs he has participated.

24 “(4) A notice of intention to remove a director, officer,
25 or other person from office and/or to prohibit his participa-

tion in the conduct of the affairs of an insured institution, shall contain a statement of the facts constituting grounds therefor, and shall fix a time and place at which a hearing will be held thereon. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after the date of service of such notice, unless an earlier or a later date is set by the Corporation at the request of (A) such director, officer, or other person and for good cause shown, or (B) the Attorney General of the United States. Unless such director, officer, or other person shall appear at the hearing in person or by a duly authorized representative, he shall be deemed to have consented to the issuance of an order of such removal and/or prohibition. In the event of such consent, or if upon the record made at any such hearing the Corporation shall find that any of the grounds specified in such notice has been established, the Corporation may issue such orders of suspension or removal from office, and/or prohibition from participation in the conduct of the affairs of the institution, as it may deem appropriate. Any such order shall become effective at the expiration of thirty days after service upon such institution and the director, officer, or other person concerned (except in the case of an order issued upon consent, which shall become effective at the time specified therein). Such order

1 shall remain effective and enforceable except to such extent
2 as it is stayed, modified, terminated, or set aside by action
3 of the Corporation or a reviewing court.

4 “(5) Within ten days after any director, officer, or other
5 person has been suspended from office and/or prohibited
6 from participation in the conduct of the affairs of an insured
7 institution under paragraph (3) of this subsection, such
8 director, officer, or other person may apply to the United
9 States district court for the judicial district in which the
10 principal office of the institution is located, or the United
11 States District Court for the District of Columbia, for a stay
12 of such suspension and/or prohibition pending the comple-
13 tion of the administrative proceedings pursuant to the notice
14 served upon such director, officer, or other person under
15 paragraph (1) or (2) of this subsection, and such court
16 shall have jurisdiction to stay such suspension and/or pro-
17 hibition.

18 “(h) **SUSPENSION OF DIRECTOR OR OFFICER CHARGED**
19 **WITH FELONY.**—Whenever any director or officer of an in-
20 sured institution, or other person participating in the conduct
21 of the affairs of such institution, is charged in any informa-
22 tion, indictment, or complaint authorized by a United States
23 Attorney, with the commission of or participation in a
24 felony involving dishonesty or breach of trust, the Corpora-
25 tion may, by written notice served upon such director, officer,

1 or other person, suspend him from office and/or prohibit
2 him from further participation in any manner in the conduct
3 of the affairs of the institution. A copy of such notice shall
4 also be served upon the institution. Such suspension and/or
5 prohibition shall remain in effect until such information, in-
6 dictment, or complaint is finally disposed of or until terminated
7 by the Corporation. In the event that a judgment of convic-
8 tion with respect to such offense is entered against such direc-
9 tor, officer, or other person, and at such time as such judgment
10 is not subject to further appellate review, the Corporation may
11 issue and serve upon such director, officer, or other person an
12 order removing him from office and/or prohibiting him from
13 further participation in any manner in the conduct of the
14 affairs of the institution except with the consent of the Cor-
15 poration. A copy of such order shall also be served upon
16 such institution, whereupon such director or officer shall cease
17 to be a director or officer of such institution. A finding of
18 not guilty or other disposition of the charge shall not preclude
19 the Corporation from thereafter instituting proceedings to re-
20 move such director, officer, or other person from office and/or
21 to prohibit further participation in institution affairs, pur-
22 suant to paragraph (1) or (2) of subsection (g) of this
23 section.

24 “(i) TERMINATION OF FEDERAL HOME LOAN BANK
25 MEMBERSHIP.—Termination under this section or otherwise

1 of the status of an institution as an insured institution shall
2 automatically constitute a removal under subsection (i) of
3 section 6 of the Federal Home Loan Bank Act of the institu-
4 tion from Federal home loan bank membership, if at the
5 time of such termination such institution is a member of a
6 Federal home loan bank; and removal of an institution
7 from Federal home loan bank membership under subsec-
8 tion (i) of section 6 of the Federal Home Loan Bank Act
9 or otherwise shall automatically constitute an order of ter-
10 mination under this section of the status of such institution as
11 an insured institution, if such institution is at the time of such
12 removal an insured institution.

13 “(j) HEARINGS AND JUDICIAL REVIEW.—(1) Any
14 hearing provided for in this section shall be held in the Fed-
15 eral judicial district or in the territory in which the principal
16 office of the institution is located unless the party afforded the
17 hearing consents to another place, and shall be conducted in
18 accordance with the provisions of ~~the Administrative Pro-~~
19 ~~cedure Act; but such hearing shall be private, unless a public~~
20 ~~hearing is agreed to by the party afforded the hearing and~~
21 ~~by the corporation~~ *chapter 5 of title 5 of the United States*
22 *Code. Such hearing shall be public unless the Corporation,*
23 *in its discretion, after considering the views of the party*
24 *afforded the hearing, determines that a private hearing*
25 *would be in the public interest. After such hearing, and*

1 within ninety days after the Corporation has notified
2 the parties that the case has been submitted to it for final
3 decision, the Corporation shall render its decision (which
4 shall include findings of fact upon which its decision is
5 predicated) and shall issue and cause to be served upon
6 each party to the proceeding an order or orders consistent
7 with the provisions of this section. Judicial review of any
8 such order shall be exclusively as provided in this subsection.
9 Unless a petition for review is timely filed in a court
10 of appeals of the United States, as hereinafter provided in
11 paragraph (2) of this subsection, and thereafter until the
12 record in the proceeding has been filed as so provided, the
13 Corporation may at any time, upon such notice and in such
14 manner as it shall deem proper, modify, terminate, or set
15 aside any such order. Upon such filing of the record, the
16 Corporation may modify, terminate, or set aside any such
17 order with permission of the court.

18 “(2) Any party to the proceeding, or any person re-
19 quired by an order issued under this section to cease and
20 desist from any of the violations or practices stated therein,
21 may obtain a review of any order served pursuant to para-
22 graph (1) of this subsection (other than an order issued
23 with the consent of the institution or the director or officer
24 or other person concerned, or an order issued under sub-

1 section (h) of this section), by filing in the court of appeals
2 of the United States for the circuit in which the principal
3 office of the institution is located, or in the United States
4 Court of Appeals for the District of Columbia Circuit,
5 within thirty days after the date of service of such order, a
6 written petition praying that the order of the Corporation be
7 modified, terminated, or set aside. A copy of such petition
8 shall be forthwith transmitted by the clerk of the court to the
9 Corporation, and thereupon the Corporation shall file in
10 the court the record in the proceeding, as provided in sec-
11 tion 2112 of title 28 of the United States Code. Upon the
12 filing of such petition, such court shall have jurisdiction,
13 which upon the filing of the record shall, except as provided
14 in the last sentence of said paragraph (1), be exclusive, to
15 affirm, modify, terminate, or set aside, in whole or in part,
16 the order of the Corporation. Review of such proceedings
17 shall be had as provided in ~~the Administrative Procedure~~
18 ~~Act~~ *chapter 7 of title 5 of the United States Code, except*
19 *that in cases referred to in section 706(2)(E) of that title,*
20 *the court shall, in lieu of the rule set forth in that section,*
21 *set aside agency action, findings, and conclusions found to*
22 *be unsupported by the weight of the evidence. The judgment*
23 *and decree of the court shall be final, except that the same*
24 *shall be subject to review by the Supreme Court upon certi-*

1 orari as provided in section 1254 of title 28 of the United
2 States Code.

3 “(3) The commencement of proceedings for judicial
4 review under paragraph (2) of this subsection shall not,
5 unless specifically ordered by the court, operate as a stay
6 of any order issued by the Corporation.

7 “(k) JURISDICTION AND ENFORCEMENT.—(1) Not-
8 withstanding any other provision of law, (A) the Corpora-
9 tion shall be deemed to be an agency of the United States with-
10 in the meaning of section 451 of title 28 of the United States
11 Code; (B) any civil action, suit, or proceeding to which the
12 Corporation shall be a party shall be deemed to arise under
13 the laws of the United States, and the United States district
14 courts shall have original jurisdiction thereof, without regard
15 to the amount in controversy; and (C) the Corporation may,
16 without bond or security, remove any such action, suit, or
17 proceeding from a State court to the United States district
18 court for the district and division embracing the place where
19 the same is pending by following any procedure for removal
20 now or hereafter in effect: *Provided*, That any action, suit,
21 or proceeding to which the Corporation is a party in its
22 capacity as conservator, receiver, or other legal custodian of
23 an insured State-chartered institution and which involves only
24 the rights or obligations of investors, creditors, stockholders,

1 and such institution under State law shall not be deemed to
2 arise under the laws of the United States. No attachment or
3 execution shall be issued against the Corporation or its prop-
4 erty before final judgment in any action, suit, or proceeding
5 in any court of any State or of the United States or any ter-
6 ritory, or any other court.

7 “(2) The Corporation may, in its discretion, apply to
8 the United States district court, or the United States court
9 of any territory, within the jurisdiction of which the prin-
10 cipal office of the institution is located, for the enforcement
11 of any effective and outstanding notice or order issued by the
12 Corporation under this section, and such courts shall have
13 jurisdiction and power to order and require compliance there-
14 with; but except as otherwise provided in this section no
15 court shall have jurisdiction to affect by injunction or other-
16 wise the issuance or enforcement of any notice or order under
17 this section, or to review, modify, suspend, terminate, or set
18 aside any such notice or order.

19 “(1) REPORTING REQUIREMENTS.—(1) Whenever a
20 change occurs in the outstanding voting stock of any insured
21 institution which will result in control or a change in the
22 control of such institution, the president or other chief ex-
23 ecutive officer of such institution shall promptly report
24 such facts to the Corporation upon obtaining knowledge of
25 such change. As used in this subsection, the term ‘control’

1 means the power to directly or indirectly direct or cause
2 the direction of the management or policies of the insured
3 institution. If there is any doubt as to whether a change
4 in ownership or other change in the outstanding voting
5 stock of any insured institution is sufficient to result in con-
6 trol or a change in the control thereof, such doubt shall be
7 resolved in favor of reporting the facts to the Corporation.

8 “(2) Whenever an insured institution or an insured
9 bank of the Federal Deposit Insurance Corporation makes
10 a loan or loans secured (or to be secured) by 25 per centum
11 or more of the voting stock of an insured institution, the
12 president or other chief executive officer of the lending in-
13 sured institution or insured bank shall promptly report such
14 fact to the Corporation upon obtaining knowledge of such
15 loan or loans, except that no report need be made in those
16 cases where the borrower has been the owner of record
17 of the stock for a period of one year or more, or the stock
18 is of a newly organized insured institution prior to its
19 opening.

20 “(3) The reports required by paragraphs (1) and (2)
21 of this subsection shall contain the following information to
22 the extent that it is known by the person making the report:
23 (A) the number of shares involved, (B) the names of the
24 sellers (or transferors), (C) the names of the purchasers

1 (or transferees), (D) the names of the beneficial owners
2 if the shares are of record in another name or other names,
3 (E) the purchase price, (F) the total number of shares
4 owned by the sellers (or transferors), the purchasers (or
5 transferees) and the beneficial owners both immediately
6 before and after the transaction, and in the case of a loan,
7 (G) the name of the borrower, (H) the amount of the loan,
8 and (I) the name of the institution issuing the stock secur-
9 ing the loan and the number of shares securing the loan. In
10 addition to the foregoing, such reports shall contain such
11 other information as may be available to inform the Corpora-
12 tion of the effect of the transaction upon control of the insti-
13 tution whose stock is involved. The reports required by
14 this subsection shall be in addition to any reports that may be
15 required pursuant to other provisions of law.

16 “(4) Whenever such a change as is described in para-
17 graph (1) of this subsection occurs, the insured institution
18 involved shall report promptly to the Corporation any
19 change or changes, or replacement or replacements, of its
20 chief executive officer or of any director occurring in the next
21 twelve-month period, including in its report a statement of
22 the past and current business and professional affiliations of
23 the new chief executive officer or director.

24 “(5) Without limitation by or on the foregoing provi-
25 sions of this subsection, the Corporation may require insured

1 institutions and individuals or other persons who have or
2 have had any connection with the management of any in-
3 sured institution, as defined by the Corporation, to provide,
4 in such manner and under such civil penalties (which shall
5 be cumulative to any other remedies) as the Corporation
6 may prescribe, such periodic or other reports and disclosures
7 as the Corporation may determine to be necessary or ap-
8 propriate for the protection of investors or the Corporation.

9 “(6) As used in this subsection, the term ‘stock’ means
10 such stock or other equity securities or equity interests in an
11 insured institution, or rights, interests, or powers with respect
12 thereto, regardless of whether such institution is a stock com-
13 pany, a mutual institution, or otherwise, as the Corporation
14 may by regulation define for the purposes of this subsection.

15 “(m) ANCILLARY PROVISIONS.—(1) In making ex-
16 aminations of insured institutions, examiners appointed by
17 the Federal Home Loan Bank Board shall have power, on
18 behalf of the Corporation, to make such examinations of the
19 affairs of all affiliates of such institutions as shall be necessary
20 to disclose fully the relations between such institutions and
21 their affiliates and the effect of such relations upon such
22 institutions. The cost of examinations of such affiliates shall
23 be assessed against and paid by the institution. For pur-
poses of this subsection, the term ‘affiliate’ shall have the

as in section 2 (b) of the Banking

1 Act of 1933 (12 U.S.C. 221a(b)), except that the term
2 'member bank' in said section 2(b) shall be deemed to refer
3 to an insured institution.

4 “(2) In connection with examinations of insured insti-
5 tutions and affiliates thereof, the Corporation, or its desig-
6 nated representatives, shall have power to administer oaths
7 and affirmations and to examine and to take and preserve
8 testimony under oath as to any matter in respect of the
9 affairs or ownership of any such institution or affiliate there-
10 of, and to issue subpoenas and subpoenas duces tecum, and,
11 for the enforcement thereof, to apply to the United States
12 district court for the judicial district or the United States
13 court in any territory in which the principal office of the
14 institution or affiliate thereof is located, or in which the wit-
15 ness resides or carries on business. Such courts shall have
16 jurisdiction and power to order and require compliance with
17 any such subpoena.

18 “(3) In the course of or in connection with any pro-
19 ceeding under this section, the Corporation or its designated
20 representatives, including any person designated to conduct
21 any hearing under this section, shall have power to admin-
22 ister oaths and affirmations, to take or cause to be taken dep-
23 ositions, and to issue, revoke, quash, or modify subpoenas
24 and subpoenas duces tecum; and the Corporation is empow-
25 ered to make rules and regulations with respect to any such

1 proceedings. The attendance of witnesses and the production
2 of documents provided for in this subsection may be required
3 from any place in any State or in any territory at any desig-
4 nated place where such proceeding is being conducted. Any
5 party to proceedings under this section may apply to the
6 United States District Court for the District of Columbia, or
7 the United States district court for the judicial district or the
8 United States court in any territory in which such proceed-
9 ing is being conducted, or where the witness resides or carries
10 on business, for enforcement of any subpoena or subpoena duces
11 tecum issued pursuant to this subsection, and such courts shall
12 have jurisdiction and power to order and require compliance
13 therewith. Witnesses subpoenaed under this subsection shall
14 be paid the same fees and mileage that are paid witnesses
15 in the district courts of the United States. All expenses of
16 the Board or of the Federal Savings and Loan Insurance
17 Corporation in connection with this section shall be consid-
18 ered as nonadministrative expenses. Any court having juris-
19 diction of any proceeding instituted under this section by an
20 insured institution, or a director or officer thereof, may allow
21 to any such party such reasonable expenses and attorneys'
22 fees as it deems just and proper; and such expenses and
23 fees shall be paid by the institution or from its assets.

24 “(n) SERVICE.—Any service required or authorized to

1 be made by the Corporation under this section may be
 2 made by registered mail, or in such other manner reason-
 3 ably calculated to give actual notice as the Corporation
 4 may by regulation or otherwise provide. Copies of any
 5 notice or order served by the Corporation upon any State-
 6 chartered institution or any director or officer thereof or
 7 other person participating in the conduct of its affairs, pur-
 8 suant to the provisions of this section, shall also be sent to
 9 the appropriate State supervisory authority.

10 “(o) NOTICE TO STATE AUTHORITIES.—In connection
 11 with any proceeding under subsection (e), (f) (1), or (g)
 12 of this section involving an insured State-chartered institu-
 13 tion or any director or officer or other person participating
 14 in the conduct of its affairs, the Corporation shall provide
 15 the appropriate State supervisory authority with notice of
 16 the Corporation's intent to institute such a proceeding and
 17 the grounds therefor. Unless within such time as the Cor-
 18 poration deems appropriate in the light of the circumstances
 19 of the case (which time must be specified in the notice pre-
 20 scribed in the preceding sentence) satisfactory corrective
 21 action is effectuated by action of the State supervisory author-
 22 ity, the Corporation may proceed as provided in this section :
 23 ~~Provided, however, That no~~ . No institution or other party
 24 who is the subject of any notice or order issued by the
 25 Corporation under this section shall have standing to raise

1 the requirements of this subsection as ground for attacking
2 the validity of any such notice or order.

3 “(p) PENALTIES.—(1) Any director or officer, or
4 former director or officer, of an insured institution or an
5 institution any of the accounts of which are insured, or any
6 other person, against whom there is outstanding and effective
7 any notice or order (which is an order which has
8 become final) served upon such director, officer, or other
9 person under subsection (g) (3), (g) (4), or (h) of this
10 section, and who (A) participates in any manner in the
11 conduct of the affairs of such institution, or directly or indirectly
12 solicits or procures, or transfers or attempts to
13 transfer, or votes or attempts to vote any proxies, consents,
14 or authorizations in respect to any voting rights in such
15 institution, or (B) without the prior written approval of the
16 Corporation, votes for a director or serves or acts as a
17 director, officer, or employee of any insured institution, shall
18 upon conviction be fined not more than \$5,000 or imprisoned
19 for not more than one year, or both.

20 “(2) Except with the prior written consent of the
21 Corporation, no person shall serve as a director, officer, or
22 employee of an insured institution who has been convicted,
23 or who is hereafter convicted, of a criminal offense involving
24 dishonesty or a breach of trust. For each willful violation

1 of this prohibition, the institution involved shall be subject
2 to a penalty of not more than \$100 for each day this pro-
3 hibition is violated, which the Corporation may recover by
4 suit or otherwise for its own use.

5 “(q) DEFINITIONS.—(1) As used in this section—

6 “(A) The terms ‘cease-and-desist order which has be-
7 come final’ and ‘order which has become final’ mean a cease-
8 and-desist order, or an order, issued by the Corporation with
9 the consent of the institution or the director or officer or
10 other person concerned, or with respect to which no pe-
11 tition for review of the action of the Corporation has been
12 filed and perfected in a court of appeals as specified in sub-
13 section (j) (2) of this section, or with respect to which the
14 action of the court in which said petition is so filed is not
15 subject to further review by the Supreme Court of the United
16 States in proceedings provided for in said subsection, or an
17 order issued under subsection (h) of this section.

18 “(B) The term ‘territory’ includes the Commonwealth
19 of Puerto Rico, and any possession of the United States or
20 any place subject to the jurisdiction of the United States.

21 “(2) As used in subsection (f) of this section, the term
22 ‘insolvency’ means that the assets of an institution are less

1 than its obligations to its creditors and others, including its
2 members.

3 “(3) As used in subsection (g) of this section, the
4 term ‘violation’ includes without limitation any action (alone
5 or with another or others) for or toward causing, bringing
6 about, participating in, counseling, or aiding or abetting a
7 violation.”

8 *SEC. 103. Subsection (c) of section 408 of the National*
9 *Housing Act (12 U.S.C. 1730a(c)) is amended to read:*

10 “(c) It shall be unlawful for any company on or after
11 September 23, 1959—

12 “(1) to acquire the control of more than one insured
13 institution, or

14 “(2) to acquire the control of an insured institution
15 when it holds the control of any other insured institution,
16 except in a transaction which has been approved by the
17 Federal Home Loan Bank Board upon a determination by
18 it that such transaction is advisable to assist in preventing
19 the commencement or continuance of involuntary liquidation
20 of the insured institution whose control, whether by acqui-
21 sition of stock or assets or otherwise, is being acquired by such
22 company or an insured institution which it controls.”

1 TITLE II—PROVISION RELATING TO THE FED-
2 ERAL DEPOSIT INSURANCE CORPORATION,
3 THE BOARD OF GOVERNORS OF THE FED-
4 ERAL RESERVE SYSTEM, AND THE COMP-
5 TROLLER OF THE CURRENCY

6 SEC. 201. Paragraph (6) of subsection (j) of section
7 7 of the Federal Deposit Insurance Act (12 U.S.C. 1817
8 (j) (6)) is repealed and section 3 of the Federal Deposit
9 Insurance Act (12 U.S.C. 1813) is amended by adding the
10 following new subsection (q) :

11 “(q) The term ‘appropriate Federal banking agency’
12 shall mean ~~(a)~~ (1) the Comptroller of the Currency in the
13 case of a national banking association or a District bank, ~~(b)~~
14 (2) the Board of Governors of the Federal Reserve System
15 in the case of a State member insured bank (except a District
16 bank), and ~~(c)~~ (3) the Federal Deposit Insurance Corpo-
17 ration in the case of a State nonmember insured bank (ex-
18 cept a District bank).”

19 SEC. 202. Section 8 of the Federal Deposit Insurance
20 Act (12 U.S.C. 1818), is amended by redesignating sub-
21 sections (b), (c), and (d) thereof as (o), (p), and (q)
22 and by adding after subsection (a) thereof the following
23 new subsections (b) through (n), inclusive:

24 “(b) (1) If, in the opinion of the appropriate Federal
25 banking agency, any insured bank or bank which has in-

1 sured deposits is engaging or has engaged, or the agency has
2 reasonable cause to believe that the bank is about to en-
3 gage, in an unsafe or unsound practice in conducting the
4 business of such bank, or is violating or has violated, or the
5 agency has reasonable cause to believe that the bank is
6 about to violate, a law, rule, or regulation, or any condition
7 imposed in writing by the agency or any written agreement
8 entered into with the agency, the agency may issue and serve
9 upon the bank a notice of charges in respect thereof. The
10 notice shall contain a statement of the facts constituting the
11 alleged violation or violations or the unsafe or unsound prac-
12 tice or practices, and shall fix a time and place at which a
13 hearing will be held to determine whether an order to cease
14 and desist therefrom should issue against the bank. Such
15 hearing shall be fixed for a date not earlier than thirty days
16 nor later than sixty days after service of such notice unless
17 an earlier or a later date is set by the agency at the request of
18 the bank. Unless the bank shall appear at the hearing by a
19 duly authorized representative, it shall be deemed to have
20 consented to the issuance of the cease-and-desist order. In
21 the event of such consent, or if upon the record made at any
22 such hearing, the agency shall find that any violation or un-
23 safe or unsound practice specified in the notice of charges has
24 been established, the agency may issue and serve upon the
25 bank an order to cease and desist from any such violation or

1 practice. Such order may, by provisions which may be
2 mandatory or otherwise, require the bank and its directors,
3 officers, employees, and agents to cease and desist from the
4 same, and, further, to take affirmative action to correct the
5 conditions resulting from any such violation or practice.

6 “(2) A cease-and-desist order shall become effective at
7 the expiration of thirty days after the service of such order
8 upon the bank concerned (except in the case of a cease-and-
9 desist order issued upon consent, which shall become effective
10 at the time specified therein), and shall remain effective and
11 enforceable as provided therein, except to such extent as it is
12 stayed, modified, terminated, or set aside by action of the
13 agency or a reviewing court.

14 “(c) (1) Whenever the appropriate Federal banking
15 agency shall determine that the violation or threatened
16 violation or the unsafe or unsound practice or practices,
17 specified in the notice of charges served upon the bank pur-
18 suant to paragraph (1) of subsection (b) of this section, or
19 the continuation thereof, is likely to cause insolvency or sub-
20 stantial dissipation of assets or earnings of the bank, or is
21 likely to otherwise seriously prejudice the interests of its de-
22 positors, the agency may issue a temporary order requiring
23 the bank to cease and desist from any such violation or prac-
24 tice. Such order shall become effective upon service upon
25 the bank and, unless set aside, limited, or suspended by a

1 court in proceedings authorized by paragraph (2) of this
2 subsection, shall remain effective and enforceable pending the
3 completion of the administrative proceedings pursuant to
4 such notice and until such time as the agency shall dismiss
5 the charges specified in such notice, or if a cease-and-desist
6 order is issued against the bank, until the effective date of
7 any such order.

8 “(2) Within ten days after the bank concerned has been
9 served with a temporary cease-and-desist order, the bank
10 may apply to the United States district court for the judicial
11 district in which the home office of the bank is located, or
12 the United States District Court for the District of Columbia,
13 for an injunction setting aside, limiting, or suspending the
14 enforcement, operation, or effectiveness of such order pend-
15 ing the completion of the administrative proceedings pur-
16 suant to the notice of charges served upon the bank under
17 paragraph (1) of subsection (b) of this section, and such
18 court shall have jurisdiction to issue such injunction.

19 “(d) In the case of violation or threatened violation of,
20 or failure to obey, a temporary cease-and-desist order issued
21 pursuant to paragraph (1) of subsection (c) of this section,
22 the appropriate Federal banking agency may apply to the
23 United States district court, or the United States court of any
24 territory, within the jurisdiction of which the home office of
25 the bank is located, for an injunction to enforce such order.

1 and, if the court shall determine that there has been such
2 violation or threatened violation or failure to obey, it shall be
3 the duty of the court to issue such injunction.

4 “(e) (1) Whenever, in the opinion of the appropriate
5 Federal banking agency, any director or officer of an insured
6 State bank (other than a District bank) has committed any
7 violation of law, rule, or regulation, or of a cease-and-desist
8 order which has become final, or has engaged or participated
9 in any unsafe or unsound practice in connection with the
10 bank, or has committed or engaged in any act, omission, or
11 practice which constitutes a breach of his fiduciary duty as
12 such director or officer, and the agency determines that the
13 bank has suffered or will probably suffer substantial financial
14 loss or other damage or that the interests of its depositors
15 could be seriously prejudiced by reason of such violation or
16 practice or breach of fiduciary duty, and that such violation
17 or practice or breach of fiduciary duty is one involving per-
18 sonal dishonesty on the part of such director or officer, the
19 agency may serve upon such director or officer a written
20 notice of its intention to remove him from office.

21 “(2) Whenever, in the opinion of the Comptroller of the
22 Currency, any director or officer of a national banking asso-
23 ciation or a District bank has committed any violation of
24 law, rule, or regulation, or of a cease-and-desist order which
25 has become final, or has engaged or participated in any

1 unsafe or unsound practice in connection with the bank, or
2 has committed or engaged in any act, omission, or practice
3 which constitutes a breach of his fiduciary duty as such
4 director or officer, and the Comptroller determines that the
5 bank has suffered or will probably suffer substantial financial
6 loss or other damage or that the interests of its depositors
7 could be seriously prejudiced by reason of such violation
8 or practice or breach of fiduciary duty, and that such viola-
9 tion or practice or breach of fiduciary duty is one involving
10 personal dishonesty on the part of such director or officer,
11 the Comptroller of the Currency may certify the facts to
12 the Board of Governors of the Federal Reserve System.

13 “(3) Whenever, in the opinion of the appropriate Fed-
14 eral banking agency, any director or officer of an insured
15 State bank (other than a District bank), by conduct or prac-
16 tice with respect to another insured bank or other business
17 institution which resulted in substantial financial loss or other
18 damage, has evidenced his personal dishonesty and unfitness
19 to continue as a director or officer and, whenever, in the
20 opinion of the appropriate Federal banking agency, any
21 other person participating in the conduct of the affairs of
22 an insured State bank (other than a District bank), by con-
23 duct or practice with respect to such bank or other insured
24 bank or other business institution which resulted in substan-
25 tial financial loss or other damage, has evidenced his personal

1 dishonesty and unfitness to participate in the conduct of
2 the affairs of such insured bank, the agency may serve
3 upon such director, officer, or other person a written notice
4 of its intention to remove him from office and/or to prohibit
5 his further participation in any manner in the conduct of
6 the affairs of the bank.

7 “(4) Whenever, in the opinion of the Comptroller of
8 the Currency, any director or officer of a national banking
9 association or a District bank, by conduct or practice with
10 respect to another insured bank or other business institution
11 which resulted in substantial financial loss or other damage,
12 has evidenced his personal dishonesty and unfitness to con-
13 tinue as a director or officer and, whenever, in the opinion of
14 the Comptroller, any other person participating in the con-
15 duct of the affairs of a national banking association or a Dis-
16 trict bank, by conduct or practice with respect to such bank
17 or other insured bank or other business institution which re-
18 sulted in substantial financial loss or other damage, has
19 evidenced his personal dishonesty and unfitness to participate
20 in the conduct of the affairs of such bank, the Comptroller
21 of the Currency may certify the facts to the Board of Gover-
22 nors of the Federal Reserve System.

23 “(5) In respect to any director or officer of an insured
24 State bank (other than a District bank) or any other
25 person referred to in paragraph (1) or (3) of this sub-

57.

1 section, the appropriate Federal banking agency may,
2 if it deems it necessary for the protection of the bank
3 or the interests of its depositors, by written notice to such
4 effect served upon such director, officer, or other person,
5 suspend him from office and/or prohibit him from further
6 participation in any manner in the conduct of the affairs of
7 the bank. Such suspension and/or prohibition shall become
8 effective upon service of such notice and, unless stayed by
9 a court in proceedings authorized by subsection (f) of this
10 section, shall remain in effect pending the completion of
11 the administrative proceedings pursuant to the notice served
12 under paragraph (1) or (3) of this subsection and until
13 such time as the agency shall dismiss the charges specified
14 in such notice, or, if an order of removal and/or prohibition
15 is issued against the director or officer or other person, until
16 the effective date of any such order. Copies of any such
17 notice shall also be served upon the bank of which he is a
18 director or officer or in the conduct of whose affairs he has
19 participated.

20 “(6) In respect to any director or officer of a national
21 banking association or a District bank, or any other person
22 referred to in paragraph (2) or (4) of this subsection, the
23 Comptroller of the Currency may, if he deems it necessary
24 for the protection of the bank or the interests of its depositors
25 ~~that~~ such director or officer be suspended from office or pro-

1 hibited from further participation in any manner in the con-
2 duct of the affairs of the bank, certify the facts to the Board
3 of Governors of the Federal Reserve System.

4 “ (7) In the case of a certification to the Board of Gov-
5 ernors of the Federal Reserve System under paragraph
6 (2) or (4) of this subsection, the Board may serve upon
7 the director, officer, or other person involved, a written
8 notice of its intention to remove him from office and/or to
9 prohibit him from further participation in any manner in
10 the conduct of the affairs of the bank. In the case of a cer-
11 tification to the Board of Governors of the Federal Reserve
12 System under paragraph (6) of this subsection, the Board
13 may by written notice to such effect served upon such direc-
14 tor, officer, or other person, suspend him from office and/or
15 prohibit him from further participation in any manner in
16 the conduct of the affairs of the bank. Such suspension
17 and/or prohibition shall become effective upon service of
18 such notice and, unless stayed by a court in proceedings au-
19 thorized by subsection (f) of this section, shall remain in
20 effect pending the completion of the administrative proceed-
21 ings pursuant to the notice served under the first sentence of
22 this paragraph and until such time as the Board shall dis-
23 miss the charges specified in such notice, or, if an order of
24 removal and/or prohibition is issued against the director or
25 officer or other person, until the effective date of any such

1 order. Copies of any such notice shall also be served upon
2 the bank of which he is a director or officer or in the conduct
3 of whose affairs he has participated. For the purposes of
4 this paragraph and paragraph (8) of this subsection, the
5 Comptroller of the Currency shall be entitled in any case
6 involving a national bank or a District bank to sit as a mem-
7 ber of the Board of Governors of the Federal Reserve Sys-
8 tem and to participate in its deliberations on any such case
9 and to vote thereon in all respects as a member of such Board.

10 “(8) A notice of intention to remove a director, officer,
11 or other person from office and/or to prohibit his participa-
12 tion in the conduct of the affairs of an insured bank, shall
13 contain a statement of the facts constituting grounds therefor,
14 and shall fix a time and place at which a hearing will be held
15 thereon. Such hearing shall be fixed for a date not earlier
16 than thirty days nor later than sixty days after the date of
17 service of such notice, unless an earlier or a later date is set
18 by the agency at the request of (A) such director or officer
19 or other person, and for good cause shown, or (B) the Attorney
20 General of the United States. Unless such director, officer,
21 or other person shall appear at the hearing in person or by
22 a duly authorized representative, he shall be deemed to have
23 consented to the issuance of an order of such removal and/or
24 prohibition. In the event of such consent, or if upon the
25 record made at any such hearing the agency shall find that

1 any of the grounds specified in such notice has been estab-
2 lished, the agency may issue such orders of suspension or re-
3 moval from office, and/or prohibition from participation in
4 the conduct of the affairs of the bank, as it may deem appro-
5 priate. Any such order shall become effective at the expira-
6 tion of thirty days after service upon such bank and the
7 director, officer, or other person concerned (except in the case
8 of an order issued upon consent, which shall become effective
9 at the time specified therein). Such order shall remain effec-
10 tive and enforceable except to such extent as it is stayed,
11 modified, terminated, or set aside by action of the agency or a
12 reviewing court.

13 “(f) Within ten days after any director, officer, or other
14 person has been suspended from office and/or prohibited
15 from participation in the conduct of the affairs of an insured
16 bank under subsection (e) (5) or (e) (7) of this section, such
17 director, officer, or other person may apply to the United
18 States district court for the judicial district in which the home
19 office of the bank is located, or the United States District
20 Court for the District of Columbia, for a stay of such sus-
21 pension and/or prohibition pending the completion of the
22 administrative proceedings pursuant to the notice served upon
23 such director, officer, or other person under subsection (e)
24 (1), (e) (3), or (e) (7) of this section, and such court shall
25 have jurisdiction to stay such suspension and/or prohibition.

1 “(g) (1) Whenever any director or officer of an insured
2 bank, or other person participating in the conduct of the
3 affairs of such bank, is charged in any information, indictment,
4 ment, or complaint authorized by a United States attorney,
5 with the commission of or participation in a felony involving
6 dishonesty or breach of trust, the appropriate Federal banking
7 agency may, by written notice served upon such director,
8 officer, or other person suspend him from office and/or prohibit
9 him from further participation in any manner in the
10 conduct of the affairs of the bank. A copy of such notice shall
11 also be served upon the bank. Such suspension and/or prohibition
12 shall remain in effect until such information, indictment,
13 ment, or complaint is finally disposed of or until terminated
14 by the agency. In the event that a judgment of conviction
15 with respect to such offense is entered against such director,
16 officer, or other person, and at such time as such judgment is
17 not subject to further appellate review, the agency may issue
18 and serve upon such director, officer, or other person an
19 order removing him from office and/or prohibiting him from
20 further participation in any manner in the conduct of the
21 affairs of the bank except with the consent of the appropriate

 . A copy of such order shall also be served upon such
 on such director or officer shall cease to be a
 r of such bank. A finding of not guilty or
 ge shall not preclude the agency

1 from thereafter instituting proceedings to remove such di-
2 rector, officer, or other person from office and/or to prohibit
3 further participation in bank affairs, pursuant to paragraph
4 (1), (2), (3), (4), or (7) of subsection (e) of this
5 section.

6 “(2) If at any time, because of the suspension of one
7 or more directors pursuant to this section, there shall be on
8 the board of directors of a national bank less than a quorum
9 of directors not so suspended, all powers and functions vested
10 in or exercisable by such board shall vest in and be exer-
11 cisable by the director or directors on the board not so sus-
12 pended, until such time as there shall be a quorum of the
13 board of directors. In the event all of the directors of a na-
14 tional bank are suspended pursuant to this section, the Comp-
15 troller of the Currency shall appoint persons to serve tempo-
16 rarily as directors in their place and stead pending the termi-
17 nation of such suspensions, or until such time as those who
18 have been suspended, cease to be directors of the bank and
19 their respective successors take office.

20 “(h) (1) Any hearing provided for in this section shall
21 be held in the Federal judicial district or in the territory in
22 which the home office of the bank is located unless the party
23 afforded the hearing consents to another place, and shall be
24 conducted in accordance with the provisions of the Ad-
25 ministrative Procedure Act; but such hearing shall be:

1 private, unless a public hearing is agreed to by the party
2 afforded the hearing and by the appropriate Federal bank-
3 ing agency chapter 5 of title 5 of the United States Code.
4 Such hearing shall be public unless the appropriate
5 Federal banking agency, in its discretion, after consider-
6 ing the views of the party afforded the hearing, deter-
7 mines that a private hearing would be in the public interest.
8 After such hearing, and within ninety days after the appro-
9 priate Federal banking agency or Board of Governors of
10 the Federal Reserve System has notified the parties that
11 the case has been submitted to it for final decision, it shall
12 render its decision (which shall include findings of fact
13 upon which its decision is predicated) and shall issue and
14 serve upon each party to the proceeding an order or orders
15 consistent with the provisions of this section. Judicial re-
16 view of any such order shall be exclusively as provided in
17 this subsection (h). Unless a petition for review is timely
18 filed in a court of appeals of the United States, as hereinafter
19 provided in paragraph (2) of this subsection, and thereafter
20 until the record in the proceeding has been filed as so pro-
21 vided, the issuing agency may at any time, upon such notice
22 and in such manner as it shall deem proper, modify, ter-
23 minate, or set aside any such order. Upon such filing of
24 the record, the agency may modify, terminate, or set aside
25 any such order with permission of the court.

1 “(2) Any party to the proceeding, or any person
2 required by an order issued under this section to cease and
3 desist from any of the violations or practices stated therein,
4 may obtain a review of any order served pursuant to para-
5 graph (1) of this subsection (other than an order issued with
6 the consent of the bank or the director or officer or other per-
7 son concerned, or an order issued under paragraph (1) of sub-
8 section (g) of this section) by the filing in the court of
9 appeals of the United States for the circuit in which the
10 home office of the bank is located, or in the United States
11 Court of Appeals for the District of Columbia Circuit, within
12 thirty days after the date of service of such order, a written
13 petition praying that the order of the agency be modified,
14 terminated, or set aside. A copy of such petition shall be
15 forthwith transmitted by the clerk of the court to the agency,
16 and thereupon the agency shall file in the court the record
17 in the proceeding, as provided in section 2112 of title 28
18 of the United States Code. Upon the filing of such petition,
19 such court shall have jurisdiction, which upon the filing of
20 the record shall except as provided in the last sentence of said
21 paragraph (1) be exclusive, to affirm, modify, terminate,
22 or set aside, in whole or in part, the order of the agency.
23 Review of such proceedings shall be had as provided in
24 ~~the Administrative Procedure Act~~ chapter 7 of title 5 of
25 *the United States Code, except that in cases referred to in*

1 *section 706(2)(E) of that title, the court shall, in lieu*
2 *of the rule set forth in that section, set aside agency*
3 *action, findings, and conclusions found to be unsupported*
4 *by the weight of the evidence. The judgment and decree*
5 *of the court shall be final, except that the same shall be sub-*
6 *ject to review by the Supreme Court upon certiorari, as*
7 *provided in section 1254 of title 28 of the United States*
8 *Code.*

9 “(3) The commencement of proceedings for judicial re-
10 view under paragraph (2) of this subsection shall not, unless
11 specifically ordered by the court, operate as a stay of any
12 order issued by the agency.

13 “(i) The appropriate Federal banking agency may in
14 its discretion apply to the United States district court, or
15 the United States court of any territory, within the jurisdic-
16 tion of which the home office of the bank is located, for the
17 enforcement of any effective and outstanding notice or order
18 issued under this section, and such courts shall have juris-
19 diction and power to order and require compliance
20 therewith; but except as otherwise provided in this section no
21 court shall have jurisdiction to affect by injunction or other-
22 wise the issuance or enforcement of any notice or order under
23 this section, or to review, modify, suspend, terminate, or set
24 aside any such notice or order.

1 “(j) Any director or officer, or former director or offi-
2 cer of an insured bank, or any other person, against whom
3 there is outstanding and effective any notice or order (which
4 is an order which has become final) served upon such direc-
5 tor, officer, or other person under subsections (e) (5),
6 (e) (7), (e) (8), or (g) of this section, and who
7 (i) participates in any manner in the conduct of the affairs
8 of the bank involved, or directly or indirectly solicits or
9 procures, or transfers or attempts to transfer, or votes or
10 attempts to vote, any proxies, consents, or authorizations in
11 respect of any voting rights in such bank, or (ii) without
12 the prior written approval of the appropriate Federal bank-
13 ing agency, votes for a director, serves or acts as a director,
14 officer, or employee of any bank, shall upon conviction be
15 fined not more than \$5,000 or imprisoned for not more than
16 one year, or both.

17 “(k) As used in this section (1) the terms ‘cease-and-
18 desist order which has become final’ and ‘order which has
19 become final’ mean a cease-and-desist order, or an order,
20 issued by the appropriate Federal banking agency with the
21 consent of the bank or the director or officer or other person
22 concerned, or with respect to which no petition for review
23 of the action of the agency has been filed and perfected in
24 a court of appeals as specified in paragraph (2) of subsec-
25 tion (h), or with respect to which the action of the court

1 in which said petition is so filed is not subject to further
2 review by the Supreme Court of the United States in pro-
3 ceedings provided for in said paragraph, or an order issued
4 under paragraph (1) of subsection (g) of this section, and (2)
5 the term 'violation' includes without limitation any action
6 (alone or with another or others) for or toward causing, bring-
7 ing about, participating in, counseling, or aiding or abetting
8 a violation.

9 “(1) Any service required or authorized to be made by
10 the appropriate Federal banking agency under this section
11 may be made by registered mail, or in such other manner
12 reasonably calculated to give actual notice as the agency may
13 by regulation or otherwise provide. Copies of any notice or
14 order served by the agency upon any State bank or any
15 director or officer thereof or other person participating in the
16 conduct of its affairs, pursuant to the provisions of this sec-
17 tion, shall also be sent to the appropriate State supervisory
18 authority.

19 “(m) In connection with any proceeding under sub-
20 section (b), (c) (1), or (e) of this section involving an in-
21 sured State bank or any director or officer or other person
22 participating in the conduct of its affairs, the appropriate
23 Federal banking agency shall provide the appropriate State
24 supervisory authority with notice of the agency's intent to
25 institute such a proceeding and the grounds therefor. Unless

1 within such time as the Federal banking agency deems ap-
2 propriate in the light of the circumstances of the case (which
3 time must be specified in the notice prescribed in the preced-
4 ing sentence) satisfactory corrective action is effectuated by
5 action of the State supervisory authority, the agency may
6 proceed as provided in this section: ~~Provided, however, That~~
7 ~~no~~ . No bank or other party who is the subject of any
8 notice or order issued by the agency under this section shall
9 have standing to raise the requirements of this subsection as
10 ground for attacking the validity of any such notice or order.

11 “(n) In the course of or in connection with any pro-
12 ceeding under this section, the agency conducting the pro-
13 ceeding, or any member or designated representative thereof,
14 including any person designated to conduct any hearing
15 under this section, shall have the power to administer oaths
16 and affirmations, to take or cause to be taken depositions,
17 and to issue, revoke, quash, or modify subpoenas and sub-
18 penas duces tecum; and such agency is empowered to make
19 rules and regulations with respect to any such proceedings.
20 The attendance of witnesses and the production of documents
21 provided for in this subsection may be required from any
22 place in any State or in any territory or other place subject
23 to the jurisdiction of the United States at any designated
24 place where such proceeding is being conducted. Any party
25 to proceedings under this section may apply to the United

1 States District Court for the District of Columbia, or the
2 United States district court for the judicial district or the
3 United States court in any territory in which such proceeding
4 is being conducted, or where the witness resides or carries
5 on business, for enforcement of any subpoena or subpoena
6 duces tecum issued pursuant to this subsection, and such
7 courts shall have jurisdiction and power to order and require
8 compliance therewith. Witnesses subpoenaed under this sec-
9 tion shall be paid the same fees and mileage that are paid
10 witnesses in the district courts of the United States. Any
11 court having jurisdiction of any proceeding instituted under
12 this section by an insured bank or a director or officer
13 thereof, may allow to any such party such reasonable
14 expenses and attorneys' fees as it deems just and proper;
15 and such expenses and fees shall be paid by the bank or
16 from its assets."

17 SEC. 203. Subsections (b) and (c) of section 10 of the
18 Federal Deposit Insurance Act (12 U.S.C. 1820 (b), (c))
19 are amended to read as follows:

20 "(b) The Board of Directors shall appoint examiners
21 who shall have power, on behalf of the Corporation, to ex-
22 amine any insured State nonmember bank (except a Dis-
23 trict bank), any State nonmember bank making appli-
24 cation to become an insured bank, and any closed insured
25 bank, whenever in the judgment of the Board of Directors

1 an examination of the bank is necessary. In addition to the
2 examinations provided for in the preceding sentence, such
3 examiners shall have like power to make a special examina-
4 tion of any State member bank and any national bank or
5 District bank, whenever in the judgment of the Board of
6 Directors such special examination is necessary to deter-
7 mine the condition of any such bank for insurance purposes.
8 In making examinations of insured banks, examiners ap-
9 pointed by the Corporation shall have power on behalf of
10 the Corporation to make such examinations of the affairs of
11 all affiliates of such banks as shall be necessary to disclose
12 fully the relations between such banks and their affiliates
13 and the effect of such relations upon such banks. Each
14 examiner shall have power to make a thorough examination
15 of all of the affairs of the bank and its affiliates, and shall
16 make a full and detailed report of the condition of the
17 bank to the Corporation. The Board of Directors in like
18 manner shall appoint claim agents who shall have power to
19 investigate and examine all claims for insured deposits.
20 Each claim agent shall have power to administer oaths and
21 affirmations and to examine and to take and preserve testi-
22 mony under oath as to any matter in respect to claims
23 for insured deposits, and to issue subpoenas and subpoenas
24 duces tecum, and, for the enforcement thereof, to apply
25 to the United States district court for the judicial district

1 or the United States court in any territory in which the
2 main office of the bank or affiliate thereof is located, or in
3 which the witness resides or carries on business. Such courts
4 shall have jurisdiction and power to order and require com-
5 pliance with any such subpoena.

6 “(c) In connection with examinations of insured banks,
7 and affiliates thereof, the appropriate Federal banking agency,
8 or its designated representatives, shall have the power
9 to administer oaths and affirmations and to examine and to
10 take and preserve testimony under oath as to any matter in
11 respect of the affairs or ownership of any such bank or affili-
12 ate thereof, and to issue subpoenas and subpoenas duces tecum,
13 and, for the enforcement thereof, to apply to the United
14 States district court for the judicial district or the United
15 States court in any territory in which the main office of the
16 bank or affiliate thereof is located, or in which the witness
17 resides or carries on business. Such courts shall have juris-
18 diction and power to order and require compliance with any
19 such subpoena. For purposes of this section, the term ‘affiliate’
20 shall have the same meaning as where used in section 2 (b)
21 of the Banking Act of 1933 (12 U.S.C. 221a (b)) except
22 that the term ‘member bank’ in said section 2 (b) shall be
23 deemed to refer to an insured bank.”

24 SEC. 204. The first five sentences of section 8 (a) of the

1 Federal Deposit Insurance Act (12 U.S.C. 1818 (a)) are
2 amended to read as follows:

3 "SEC. 8. (a) Any insured bank (except a national
4 member bank or State member bank) may, upon not less
5 than ninety days' written notice to the Corporation, termi-
6 nate its status as an insured bank. Whenever the Board
7 of Directors shall find that an insured bank or its directors or
8 trustees have engaged or are engaging in unsafe or unsound
9 practices in conducting the business of such bank, or is in an
10 unsafe or unsound condition to continue operations as an in-
11 sured bank, or violated an applicable law, rule, regulation
12 or order, or any condition imposed in writing by the Corpora-
13 tion or any written agreement entered into with the Corpora-
14 tion, the Board of Directors shall first give to the Comptroller of
15 the Currency in the case of a national bank or a District bank,
16 to the authority having supervision of the bank in the case of
17 a State bank, and to the Board of Governors of the Federal
18 Reserve System in the case of a State member bank, a
19 statement with respect to such practices or violations for
20 the purpose of securing the correction thereof and shall give
21 a copy thereof to the bank. Unless such correction shall
22 be made within one hundred and twenty days, or such shorter
23 period not less than twenty days fixed by the Corporation
24 in any case where the Board of Directors in its discretion
25 has determined that the insurance risk of the Corpora-

tion is unduly jeopardized, or fixed by the Comptroller of the Currency in the case of a national bank, or the State authority in the case of a State bank, or Board of Governors of the Federal Reserve System in the case of a State member bank as the case may be, the Board of Directors, if it shall determine to proceed further, shall give to the bank not less than thirty days' written notice of intention to terminate the status of the bank as an insured bank, and shall fix a time and place for a hearing before the Board of Directors or before a person designated by it to conduct such hearing, at which evidence may be produced, and upon such evidence the Board of Directors shall make written findings which shall be conclusive. If the Board of Directors shall find that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time above prescribed in which to make such corrections, the Board of Directors may order that the insured status of the bank be terminated on a date subsequent to such finding and to the expiration of the time specified in such notice of intention. Unless the bank shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its status as an insured bank and termination of such status thereupon may be ordered. Any insured bank whose insured status

1 has been terminated by order of the Board of Directors under
2 this subsection shall have the right of judicial review of such
3 order only to the same extent as provided for the review of
4 orders under subsection (h) of this section."

5 SEC. 205. Subsection "Fourth" of section 9 of the Fed-
6 eral Deposit Insurance Act (12 U.S.C. 1819 "Fourth")
7 is amended to read as follows:

8 "Fourth. To sue and be sued, complain and defend, in
9 any court of law or equity, State or Federal. All suits of a
10 civil nature at common law or in equity to which the Cor-
11 poration shall be a party shall be deemed to arise under the
12 laws of the United States, and the United States district
13 courts shall have original jurisdiction thereof, without regard
14 to the amount in controversy; and the Corporation may,
15 without bond or security, remove any such action, suit, or
16 proceeding from a State court to the United States district
17 court for the district or division embracing the place where
18 the same is pending by following any procedure for removal
19 now or hereafter in effect: ~~Provided, That, except that~~ any
20 such suit to which the Corporation is a party in its capacity as
21 receiver of a State bank and which involves only the rights or
22 obligations of depositors, creditors, stockholders, and such
23 State bank under State law shall not be deemed to arise
24 under the laws of the United States. No attachment or
25 execution shall be issued against the Corporation or its

1 property before final judgment in any suit, action, or pro-
2 ceeding in any State, county, municipal, or United States
3 court. The Board of Directors shall designate an agent upon
4 whom service of process may be made in any State, Terri-
5 tory, or jurisdiction in which any insured bank is located."

6 SEC. 206. Nothing contained in this title shall be con-
7 strued to repeal, modify, or affect the provisions of section 19
8 of the Federal Deposit Insurance Act (12 U.S.C. 1829).

9 SEC. 207. Section 30 of the Banking Act of 1933 (12
10 U.S.C. 77) is hereby repealed.

11 TITLE III

12 INCREASE IN INSURANCE LIMIT

13 SEC. 301. (a) The first sentence of section 3 (m) of
14 the Federal Deposit Insurance Act (12 U.S.C. 1813 (m))
15 is amended by changing "\$10,000" to read "\$15,000".

16 (b) The first sentence of section 7 (i) of the Federal
17 Deposit Insurance Act (12 U.S.C. 1817 (i)) is amended
18 by changing "\$10,000" to read "\$15,000".

19 (c) The last sentence of section 11 (a) of the Federal
20 Deposit Insurance Act (12 U.S.C. 1821 (a)) is amended
21 to read: "The maximum amount of the insured deposit of
22 any depositor shall be \$15,000."

23 (d) The fifth sentence of section 11 (i) of the Federal
24 Deposit Insurance Act (12 U.S.C. 1821 (i)) is amended
25 by changing "\$10,000" to read "\$15,000".

1 (e) Section 401 (b) of title IV of the National Hous-
2 ing Act (12 U.S.C. 1724 (b)) is amended by changing
3 “\$10,000” to read “\$15,000” each place it appears therein.

4 (f) Section 405 (a) of title IV of the National Hous-
5 ing Act (12 U.S.C. 1728 (a)) is amended by changing
6 “\$10,000” to read “\$15,000”.

7 (g) The amendments made by this section shall be
8 effective only with respect to claims accruing after the date
9 of enactment of this Act.

10 *TITLE IV—EXPIRATION*

11 *SEC. 401. The provisions of titles I and II of this Act*
12 *and any provisions of law enacted by said titles shall be effec-*
13 *tive only during the period ending at the close of June 30,*
14 *1968. Effective upon the expiration of such period, each*
15 *provision of law amended by this Act is further amended to*
16 *read as it did immediately prior to the enactment of this Act*
17 *and each provision of law repealed by this Act is reenacted.*

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(The following information was submitted for the record:)

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C., August 24, 1966.

HON. JOHN E. MOSS,
House of Representatives,
Washington, D.C.

DEAR COLLEAGUE: On Monday, August 22, the Senate passed S. 3158, a bill to broaden the authority of federal agencies which supervise financial institutions.

The bill in the form which it passed provides for hearings with respect to "cease and desist" orders and orders suspending from office directors, officers, and employees of federally insured financial institutions. While S. 3158 provides that such hearings be conducted in accordance with the Administrative Procedure Act, the bill also provides that they be conducted in secret unless both parties agree to public hearings. I think this is very bad policy inasmuch as more often than not public hearings are definitely in the public interest. Furthermore, secret hearings smack of "star chamber" proceedings entirely alien to our system of law and procedural due process. Secret hearings are very unusual and I am informed that the Securities and Exchange Commission, for example, holds public hearings on revoking a stockbroker's registration, in effect putting him out of business. This is because of the public interest involved and because of the great principle that a democratic form of government must be conducted in the open.

Only where national security is concerned or where a criminal investigation is involved should government proceed behind closed doors.

As you have, no doubt, concluded, my reason for writing you about this subject is whether, in your opinion, this provision for secret hearings contained in S. 3158, a copy of which is attached, violates both the letter and spirit of Public Law 89-487, the Act you sponsored clarifying and protecting the right of the public to information.

Since I plan to call S. 3158 up soon for consideration by the Banking and Currency Committee, I would appreciate your early reply.

Sincerely,

WRIGHT PATMAN, *Chairman.*

HOUSE OF REPRESENTATIVES,
FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE,
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., August 26, 1966.

HON. WRIGHT PATMAN,
U.S. House of Representatives,
Rayburn H.O.B., Washington, D.C.

DEAR WRIGHT: Thank you for your letter of August 24, 1966 asking for my comments on a provision of S. 3158 which would permit hearings before Federal agencies which supervise financial institutions to be held in secret unless both parties agree to public hearings.

I believe such a provision would be a clear contradiction of the intent of Public Law 89-487 which has just been passed by the Congress after the most careful consideration of issues of government secrecy almost identical to the problem which would be created by S. 3158.

Two sections of Public Law 89-487 are pertinent to the proposed secret meeting section of S. 3158. Subsection (d) states that Federal agencies such as the Board referred to in S. 3158 shall keep a record of final votes which shall be available for public inspection. During development and consideration of Public Law 89-487 we took into account the question of open meetings of the agencies whose votes were to be made public and decided it would violate the spirit of our democratic system to include any language specifically permitting secret sessions of Federal boards.

The problem of information involving financial institutions was specifically considered in connection with Subsection (e) (8) which exempts from the public records provision information contained in reports prepared by Federal agencies responsible for the regulation or supervision of financial institutions. If there had been an intent to permit secret meetings by boards of agencies regulating

financial institutions, this fact would have been clearly set forth. It is my belief that the Congress included in Public Law 89-487 all of the protection that is advisable for information from Federal agencies regulating financial institutions.

A provision similar to that proposed for S. 3158 is included in regulations governing access to information about loan applications filed with the Rural Electrification Administration. In this case basic information about the loan application is withheld from the public only upon the specific request of the applicant and only after a clear showing that the release of such information would be damaging. It has been the experience of the REA that there are very few requests for confidentiality about loan applications, and almost none of the requests are granted. Therefore, it appears to me that the secrecy provision in S. 3158 is an unnecessary provision. I think it clearly violates the spirit of Public Law 89-487 and would be a step back toward excessive government secrecy.

Sincerely,

JOHN E. MOSS, *Chairman.*

THE AMERICAN BANKERS ASSOCIATION,
New York, N.Y., September 20, 1966.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Thank you for this opportunity to comment on S. 3158, as passed by the Senate.

The bill before you would provide the Federal banking agencies with flexible tools to enable them to more effectively fulfill the responsibilities with which they are charged. The American Bankers Association is in full agreement with this objective, provided that the interests and rights of all concerned are adequately protected. We believe that S. 3158 meets these criteria and, accordingly, urge that it receive the favorable consideration of your Committee.

From the time this legislation was first proposed, The American Bankers Association has made it clear that bankers are sincerely interested in legislation which will help assure that the banking industry is kept sound, and free of undesirable elements. Any other attitude on the part of the banking community would be irresponsible. At the same time we have urged that care be taken in the fashioning of such legislation to preserve the authority of State banking departments and to assure continuation of traditional administrative and judicial safeguards for the individuals and institutions affected. In our view the provisions of S. 3158 fully reflect these important principles and it is on this basis that we urge its acceptance.

At the present time the Federal banking agencies, in dealing with serious problem cases involving either unsafe or unsound practices or dereliction on the part of individuals, have available to them only such extreme penalties as closing the bank or withdrawing of insurance. When taken, such steps can be particularly damaging to a community and to the bank's depositors. The threat of severe action to obtain necessary corrections is often impractical, but where successful may deprive individuals of their right to a hearing and judicial review. The bill under consideration provides tools which might be described as intermediate measures, designed to obtain necessary supervisory objectives without doing substantial damage to depositors, communities, or institutions.

We are particularly pleased that in its present form S. 3158 precludes Federal action in the case of State-chartered banks where State agencies are made aware of a problem and are able to obtain the necessary corrections. This provision is of great importance if we are to preserve the traditional division of authority between State and Federal banking agencies. It is also heartening that S. 3158 has not placed in the hands of any single individual the right to exercise the delicate, quasi-judicial function of removing an individual from his bank. Rather the bill provides that in the case of each agency this responsibility shall be handled by a board, so that such decisions may be made on the basis of the balanced and collective judgment of a number of persons. Finally, we are pleased to note that although the bill would give to the agencies considerable latitude in the use of the proposed intermediate tools, nevertheless administrative and judicial safeguards are spelled out with great particularity, while in the case of officer-removal action authority is restricted to situations

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where serious damage can be done the institution and where the individual involved has clearly failed to measure up to the accepted canons of financial integrity.

Once again, we commend this bill to your committee.

Sincerely yours,

ARCHIE K. DAVIS, *President.*

INDEPENDENT BANKERS ASSOCIATION OF AMERICA,
Sauk Centre, Minn., May 31, 1966.

HON. WRIGHT PATMAN,
*House Office Building,
Washington, D.C.*

DEAR CONGRESSMAN PATMAN: The enclosed resolutions were adopted by The Independent Bankers Association of America during its 32nd annual convention in Las Vegas, Nevada this month and are forwarded to you for your information.

Sincerely,

GENE MOORE, *Secretary.*

RESOLUTIONS ADOPTED BY INDEPENDENT BANKERS ASSOCIATION OF AMERICA DURING 32D ANNUAL CONVENTION MAY 5, 1966

S. 3158

Whereas The Independent Bankers Association of America has always been concerned with the necessity for careful and scrupulous examination and supervision of all banks, including thorough scrutiny of ownership and management by the various federal and state supervisory agencies in order that sound banking practices be maintained for the protection of the depositors, and

Whereas it is the opinion of The Independent Bankers Association of America that the Federal supervisory agencies of the banking industry cooperating in their banking and procedural functions presently have adequate power and regulatory authority to appropriately perform their duties in the protection of the public and the industry when used with the alacrity and diligence that the public requires and demands of its public servants, and

Whereas no expansion of this power (as relates to the banking industry) is requisite for their proper functioning, and

Whereas S. 3158 and H.R. 14159 are regarded as an unnecessary and inadequate substitute for the diligent application of existing authority in cooperation with each other and with State Bank Supervisory Authorities, and is an unwarranted erosion and weakening of the dual banking system in the United States, unsupported statistically: Now, therefore, be it

Resolved by the Independent Bankers Association of America, in convention assembled, That the incoming administration is directed to implement this resolution by vigorous opposition to the bills above referred to, and that a copy of this resolution be released to the press and printed in *THE INDEPENDENT BANKER*, together with a request that the membership, after study, outline their views by letter to their respective Senators and Congressman, and that a copy of this resolution be mailed to each member of the House and Senate Banking Committees and to the Supervisory Agencies, both state and national, which are the subjects of the consideration of this resolution.

MINIMUM WAGE

Whereas H.R. 13912 providing for an increase in the minimum wage and an extension of the coverage of the Wage and Hour law, is clearly inflationary, compounding an already serious problem, and is contrary to the Administration's guide lines on wage increases; and

Whereas an increase in the minimum wage could have the effect of numerically limiting the opportunities for certain groups such as the young, the unskilled and the elderly, to obtain gainful employment, and thus foster unemployment and be self-defeating; and

Whereas an increase in the minimum wage would be especially detrimental to small and medium size employers, and is therefore not in the general public interest: Now, therefore, be it

Resolved by The Independent Bankers Association of America, That this Association opposes the adoption of legislation increasing the minimum wage at this time; and be it further

Resolved, That this opposition be made public, and notice hereof be promptly communicated to the members of the Congress of the United States.

RIGHT TO WORK

Whereas The Independent Bankers Association of America holds that it is essential to the welfare of our nation to maintain the fundamental principles of individual liberty and freedom of choice as well as the rights of the separate states to maintain their sovereignty; and

Whereas the independent community-oriented banks have grown and developed and have helped our country to prosper in a climate in which the rights of the individual and of the separate states were not made subservient to and dominated by any single group or by the federal government (over functions which can be performed by the states); and

Whereas the compulsion inherent in the concept of forced membership in any organization is so contrary to the basic American principle of individual freedom of choice that the Congress in 1947 included Section 14(b) as a part of the Taft-Hartley Act allowing states to enact so-called Right-to-Work laws (which provide that a person need not belong to a union to keep a job); and

Whereas in a free society the privileges of getting or holding a job ought not to include compulsory membership any organization: Now, therefore, be it

Resolved, That The Independent Bankers Association of America favors retention of Section 14(b) of the Taft-Hartley Act which will permit the nineteen states which have enacted Right-to-Work laws, to keep them on their statute books and also to permit such other states as may choose to adopt such laws; and be it further

Resolved, That the Secretary of this Association send a copy of this resolution to the President of the United States, to the Secretary of Labor, and to all members of the Congress of the United States.

[Telegram]

INDEPENDENT BANKERS ASSOCIATION,
Minneapolis, Minn., September 21, 1966.

HON. WRIGHT PATMAN,
Banking and Currency Committee,
House of Representatives,
Washington, D.C.:

Independent Bankers Association Executive Council and appropriate committees holding midyear review sessions here reaffirms opposition to S. 3158 and H.R. 14159 as bad legislation overly filled with loose language granting broad unwarranted powers to Federal supervisors upon their own generalized request and with no demonstrated need. Our submission will document these views in detail for your hearing record. Our independent bankers astounded and dismayed by number of instances, almost beyond count, where punitive action is provided for against banks, bankers, and officers of thrift institutions based and premised on the opinion of Federal supervisors. Should administration urging and insistence seem to require enactment some version cease and desist proposals we strongly urge one year emergency or temporary enactment as in recently passed interest rate control legislation to permit further comprehensive hearings in the next session of dangerous grant of new powers here involved. In single dramatic contradiction provided in present language we cite special provisions to insure continued control by comptroller over national banks and quite contrary decision for superimposing of Federal administrators over primary historic and traditional supervisory authority of State supervisors.

Best regards,

PAT DuBois,
President.

REED H. ALBIG,
Chairman, Federal Legislative Committee.

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[Telegram]

WILMINGTON, N.C., May 10, 1966.

Chairman WRIGHT PATMAN,
House Banking and Currency Committee,
U.S. House of Representatives,
Washington, D.C.:

The North Carolina Savings & Loan League at its spring managers' conference has considered and discussed the effect of the proposed Senate bill S. 3158 on the savings and loan industry. This league, by resolution adopted without a dissenting vote, has expressed its opposition to the adoption of this proposed bill for that it represents a drastic change from conventional supervisory procedures which may undermine present supervision. For the reason stated, S. 3158 should not be enacted into law.

Your consideration of our opposition to this proposed bill is requested, and we hope that you will join us in opposition to this bill.

Sincerely,

NORTH CAROLINA SAVINGS & LOAN LEAGUE,
H. W. WENTWORTH, *Executive Vice President.*

[Telegram]

NEW YORK, N.Y.

HON. WRIGHT PATMAN,
Chairman, Committee on Banking and Currency,
House of Representatives,
2129 Rayburn House Office Building,
Washington, D.C.:

Last Friday the board of directors of the National Association of Mutual Savings Banks voted unanimously to support your valuable amendment to the supervisory bill increasing the insurance ceiling on deposits.

GROVER W. ENSLEY,
Executive Vice President,
National Association of Mutual Savings Banks.

MISSISSIPPI BANKERS ASSOCIATION,
Jackson, Miss., May 27, 1966.

HON. WRIGHT PATMAN,
Chairman, House Banking and Currency Committee,
House Office Building, Washington, D.C.

DEAR MR. PATMAN: I trust that you will find of interest the copy of the resolution enclosed concerning S. 3158 and H.R. 14159, either to be designated as the Financial Institutions Supervisory Act of 1966.

Sincerely yours,

LEIGH WATKINS, Jr.,
Executive Director.

RESOLUTION ON FINANCIAL INSTITUTIONS SUPERVISORY ACT OF 1966

Whereas ample evidence has been presented to the Federal bank regulatory agencies concerning unsafe and unsound banking practices, and violations of law or regulations in a few banks and savings and loan associations, and

Whereas the Federal agencies lack intermediate corrective authority to deal with such situations short of taking such drastic action which directly or indirectly results in the closing of a bank, and

Whereas there is demonstrated a need for the Federal agencies to possess additional and more flexible supervisory tools provided they are accompanied by reasonable and adequate safeguards, and

Whereas proposed legislation now pending in the Congress, S. 3158 and H.R. 14159, to permit the agencies to issue cease-and-desist orders and to remove officers and directors, would, as presently drafted, fail to protect the rights of individuals, institutions, and State banking authorities, and would concentrate an undue amount of authority in single officials or agencies, and

Whereas the American Bankers Association has recommended amendments to this proposed legislation which would not affect its intent or principles but

would protect the rights of all concerned, provide that the authority requested be subject to traditional administrative and judicial safeguards, and assure that the measures would be in the public interest as well as the best interests of banking, and

Whereas the goal of all bankers should be to rid the industry of those who would destroy its good name and at the same time preserve the strength and dynamism of the dual banking system,

It is hereby resolved, That the Mississippi Bankers Association go on record in support of the position of the American Bankers Association on S. 3158 and H.R. 14159 to amend those measures in the following respects:

"With respect to the Comptroller of the Currency, any action taken should be subject to review by a board and such procedures as are already contained in existing law dealing with officer removal should be retained. That is, in the case of national banks, final determination of a removal order would continue to be made by the Board of Governors of the Federal Reserve System. This existing authority (Section 30, Banking Act of 1933) might also be expanded to include cease-and-desist powers, subject to the same requirement of final determination by the Board of Governors.

Any action involving a state member or insured nonmember bank could only be taken by the Federal Reserve Board or Federal Deposit Insurance Corporation, as the case may be, after a showing that the appropriate state authority had failed to obtain the necessary corrections. Specifically, the Federal Reserve Board in the case of state member banks and the FDIC in the case of insured nonmember banks should be required to give written notice to the appropriate state authority. They could only proceed with cease-and-desist or officer removal orders if, after a reasonable time as determined by the appropriate Federal agency, the state authority failed to take effective action.

Several sections of the bill should be amended or deleted since the present language is, in some respects, too broad and may present serious dangers to our traditional administrative and judicial safeguards over executive action.

I hereby certify that the above and foregoing is a true and correct copy of a Resolution submitted to and adopted by the Mississippi Bankers Association in official convention assembled.

Given under my hand and the seal of the Association this 27th. day of May, 1966.

LEIGH WATKINS, Jr.,
Executive Director.

TEXAS BANKERS ASSOCIATION,
Austin, Tex., August 4, 1966.

HON. WRIGHT PATMAN,
*House of Representatives, Longworth House Office Building,
Washington, D.C.*

DEAR MR. PATMAN: The Legislative Committee of the Texas Bankers Association opposes S. 3158 known as the "cease & desist bill." The committee does not consider the bill necessary or desirable or in the public interest insofar as the measure pertains to state and national banks.

The committee instructed me to make known to you its views on this bill, with the request that you consider voting against the measure unless amended to delete the portions relating to supervision of state and national banks.

A copy of an article which just appeared in the Texas Bankers Record (published July 30, 1966) is enclosed. We hope you will have time to read this short article as it sets forth the reasons for the committee's position in opposition to S. 3158.

Thank you for your consideration in this matter.

Sincerely yours,

SAM O. KIMBERLIN, Jr.,
Executive Vice President.

TBA LEGISLATIVE COMMITTEE OPPOSES "CEASE AND DESIST" BILL

(By Sam O. Kimberlin, Jr., executive vice president,
Texas Bankers Association)

The Legislative Committee, Texas Bankers Association, opposes S. 3158, known as the "cease and desist bill." This position was first adopted by the Legislative Executive Committee meeting in Austin, July 8. Later, the position was approved by the entire Committee on Legislation, and the Texas delegat

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in Congress was notified that "the Committee does not consider S. 3158 necessary, or desirable, or in the public interest."

Present at the meeting in Austin were Joe B. Wolverton, chairman of the T.B.A. Legislative Committee, Charles L. Bybee, vice chairman, and committee members C. D. Acker, James W. Aston, J. H. Bain, Henry Clay, Richard King III, Fred Smith, Arthur Stehling, Lawrence N. Wilemon, Ed Wroe, Jr., Sam Young, Jr., and National and State Bank Division Chairmen, Jack C. Adams and C. Truett Smith. From the T.B.A. staff, Sam Kimberlin, Jr. and Leonard Passmore were in attendance.

BILL HAS BEEN CONTROVERSIAL SINCE ITS INTRODUCTION

S. 3158 has been a controversial bill since its introduction. The bill deals mostly with increased powers in the Federal Home Loan Bank Board over the savings and loan industry. As for commercial banks, however, the measure would similarly broaden authority lodged in federal bank supervisory agencies officers and directors from office under certain circumstances. The Comptroller of the Currency to issue cease and desist orders to banks and to remove bank officers and directors from office under certain circumstances. The comptroller of the Currency has publicly announced his opinion that such additional power is not necessary to the proper supervision of national banks.

There have been amendments suggested for the bill, the principal ones being as follows: (1) The Comptroller of the Currency's power to remove officers as contained in the present national banking law should be retained, and, if necessary, such provision in the present law could be expanded to give the Comptroller authority to issue cease and desist orders to national banks. The present national banking law provisions have a built-in safeguard (which would be retained under this proposed amendment) in that the exercise of removal power is subject to Federal Reserve Board review. (2) A second suggested amendment pertains to the provisions of S. 3158 relating to state chartered banks. It has been suggested that the F.D.I.C. be required, before removing an officer or director of a state bank or before issuing a cease and desist order to such bank, to notify in writing the appropriate state banking supervisory authority that it feels action is necessary in the particular situation. If, after a reasonable time as determined by the federal agency, the state banking commissioner has failed to take effective action, the federal agency would be free to act. Under this proposal the determination of what constitutes "effective action" presumably is to be determined by the federal agency, as well as determining what constitutes a "reasonable time."

The effect of these proposed amendments, if both were adopted, would be to leave national banks in virtually the same position they occupy under present law but to increase federal supervisory authority over state chartered banks. The argument is made that the grant of additional powers over state banks is justified because (a) the new authority merely gives the federal agencies an intermediate weapon that can be used to prevent a situation from arising which might ultimately require the drastic action of revocation of federal deposit insurance or expulsion from the Federal Reserve System, and (b) twelve or thirteen states do not have statutes giving their banking commissioners cease and desist and removal of officer powers, and the thirty-seven or eight states (including Texas) that do lodge such authority in their commissioners are subject to political pressures that, at times, prevent the expeditious use of such powers.

The T.B.A. Legislative Committee considered these proposed amendments in reaching the conclusion that the bill, even with such amendments, would not be in the public interest or in the interest of the dual banking system. In Texas it has never been necessary for the Texas Banking Commissioner to formally cite an officer or director for removal, although resignations have been made at his suggestion. As for our State there is no reason or need for concurrent authority in the F.D.I.C. to remove an officer or director or to issue a cease and desist order. Fortunately the relationship between this F.D.I.C. District Office and the Texas Banking Department is excellent and cooperation close.

Giving federal agencies the power to insist that state banking commissioners to action satisfactory to the federal government against state banks or their ~~men~~, or otherwise the federal agency will take such action, has the effect of ~~making~~ the states junior partners to the federal government. This would not be in the interest of state banking unless state banks are so infiltrated

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with sharpsters that the public interest is affected *and* unless state authorities cannot or will not act to correct the situation. Nothing indicates either situation exists at this time. As far as the Texas Banking Department is concerned, no one is ready to concede that it needs to have the federal government looking over its shoulder to assure the proper discharge of its duties.

In the last year or so there has been a reawakening of interest throughout the nation in modernizing state banking laws and strengthening state banking supervisory agencies. Oklahoma and Pennsylvania and other states have recently revised completely or adopted entirely new banking codes for their states. Other states are in the process of making similar revisions. This laudable program among the states has the support of every banking trade association. At least in this instance it can be accurately said that the several states are striving to accept and exercise responsibility for supervision of their state banking systems. Thus the old argument that increased federal control is necessary because the states will not accept their responsibilities has no validity as far as the applicability of S. 3158 to state banks is concerned.

MUNCIE FEDERAL SAVINGS & LOAN ASSOCIATION,
Muncie, Ind., September 23, 1966.

HON. WRIGHT PATMAN,
House of Representatives,
Washington, D.C.

DEAR SIR: Many factors have influenced the recent flow of savings in and out of Savings and Loan Associations across the nation. Not the least of these has been the "rate" competition which has gained much publicity. Even before the recent rate disadvantages, we had much inquiry regarding the limits of FSLIC Insurance of Accounts. Our customers are conscious of the \$10,000 limit and most will not be influenced by explanations of reserve positions, sound management, conservative lending practices, etc. Much influence on our customer is made by even the smallest problem in the savings and loan industry or banking field.

At our association, in the nine months period from December 10, 1965, to September 9, 1966, the dollar amount in savings accounts of above the \$10,000 insurance limit has decreased by more than 19%. This has amounted to more than four million dollars—or almost 10% of total savings. We have gained in the smaller accounts which has tended to offset the loss in the larger amounts, but we continue to experience a net loss in our savings flow.

I point to this only to illustrate why our officers and board feel that raising the maximum coverage under FSLIC Insurance to \$20,000 would benefit the Savings and Loan Industry. The larger accounts are most certainly where our loss is occurring. Although the increase in insurance coverage would not answer the complete problem of retaining savings, we know it would have a definite influence. We ask that you reconsider your proposal and increase the amount of the amendment to S. 3158 to \$20,000.

Respectfully,

N. L. TIREY, *Executive Director.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND CURRENCY,
Washington, D.C., September 19, 1966.

HON. K. A. RANDALL,
Chairman, Federal Deposit Insurance Corporation,
Washington, D.C.

DEAR CHAIRMAN RANDALL: As you know, the Committee on Banking and Currency has under consideration S. 3158, a bill "to strengthen the regulatory and supervisory authority of Federal agencies over insured banks and insured savings and loan associations, and for other purposes."

While comments on this legislation from the Federal banking agencies are welcome, more detailed and specific information is needed by our Committee. Therefore, I am submitting to you a series of questions pertinent to the subject of bank regulation and supervision, the answers to which will greatly assist

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deliberations on this bill. This detailed information is requested to be furnished in writing.

The questions are presented under a number of subject headings. It will be appreciated if they are answered in that fashion.

Your prompt attention to this request will enable the Committee to expedite its consideration of this important legislation.

Sincerely yours,

WRIGHT PATMAN, *Chairman*.

(Identical letters were sent to William McC. Martin, Jr., and Joseph J. Saxon. Only Mr. Randall was asked to answer questions 73 through 83.)

QUESTIONS ON S. 3158, THE CEASE-AND-DESIST BILL

I. ALLOCATION OF CREDIT

1. Under our fractional reserve monetary system our commercial banks create the vast bulk of the nation's money supply. Commercial banks enjoy a virtual monopoly on the creation of money and the allocation of credit through this mechanism.

What mechanism exists, if any, to insure prudent, effective and nondiscriminatory operation of this privately controlled system?

2. What public controls exist by law or regulation to prevent undue concentration of credit channeled to large corporate customers of commercial banks which have close ties to such banks through interlocking directorships or other means?

3. On the other hand, what guarantees exist either through law or regulation that the credit needs of small business are met by commercial banks?

4. Since the power to create money is sovereign—a prerogative of the public—what rights of appeal, if any, does a person have who is denied credit by a bank?

5. Furnish the Committee whatever information available concerning the contention that large borrowers have a large portion of the available credit allocated to them.

6. Also furnish the Committee copies of all complaints from small business and individual borrowers you have received over the last five years.

II. LAWS TO PROTECT THE PUBLIC INTEREST

7. Our commercial banking system indisputably is a public service industry, particularly as a result of its exercise of the public authority to create money. As such it is imperative that our banking laws protect the public right of access to available sources of credit and also protect the public's rights and interests as depositors.

What changes or additions to the present statutes, in your opinion, are necessary to protect the public interest in this regard?

8. What shortcomings are you aware of in your agency and/or sister agencies in administering the banking laws to serve the public?

9. Does there exist any conflict between your agency and other Federal or state banking supervisory agencies, either as regards existing law or regulations?

10. What criminal penalties are provided for violations of the banking laws your agency administers?

11. When a bank examiner discovers a suspected criminal violation, what formal reporting procedures are followed?

12. Are all suspected criminal violations immediately reported to the U.S. Attorney, the Federal Bureau of Investigation, and the Department of Justice?

13. How many criminal violations were reported by your agency in 1965?

14. How many indictments and convictions were obtained on the basis of these reports?

15. In 1965, how many officers, directors or employees of insured banks were removed from office for conviction of a criminal offense involving dishonesty or breach of trust? (See 12 U.S.C. 1829)

16. Are you aware of any evidence of "organized crime" in banking? If so, state the extent of this involvement.

17. What checks are made by your agency to determine whether or not banks under your jurisdiction have been violating state usury laws?

18. Cite all specific instances or cases in the last five years where action has been taken by your agency to protect the public interest as regards commercial banking operations under your jurisdiction.

III. EXAMINATIONS, AUDITS, AND REPORTS

19. S. 3158, the so-called "cease and desist" legislation, if enacted, would require adequate examinations, audits, and reports on commercial banks.

How many field examiners does your agency employ, and how often are the banks under your supervisory jurisdiction examined by your agency every year?

20. Describe in detail the examination of bank trust departments.

21. How many banks under your supervisory jurisdiction are audited each year by independent public accounting firms?

22. What authority do you have to require independent audits of banks?

23. Do you feel that there is need for independent audits of all commercial banks under your jurisdiction?

24-25. What reports are required to be filed with your agency by banks under your jurisdiction other than ordinary examination reports?

26. How many reports did your agency receive in 1965 pursuant to Public Law 88-593, requiring notification to Federal banking agencies of changes in control of insured banks and loans secured by 25% or more of the voting stock of insured banks?

27. What rules or regulations have you promulgated to protect the interests of minority stockholders, and what comments do you care to make with respect to your experience under the Securities Acts Amendments of 1964, requiring certain commercial banks to make public information as to their operations?

28. In the two years since enactment of the Securities Acts Amendments, have you achieved your avowed goal of uniform financial reporting by commercial banks under your supervision?

29. What additional statutory authority is required for you to carry out your responsibility with respect to examination, audit, and reporting requirements?

IV. AGENCY PROCEDURE—RIGHTS OF PARTIES

30. What formal procedures are available as a matter of right to applicants for new charters, mergers or branches?

31. Are record hearings available?

32. Is judicial review available?

33. What provisions of the Administrative Procedure Act apply to your agency procedures?

34. Are all requirements for the granting of charters, mergers and branches, or other actions published as a matter of record so that applicants may know precisely what is required to obtain approval?

35. Are all such regulations and requirements published in the Federal Register?

36. Are all interested parties invited to comment on proposed regulations and are public hearings always permitted parties in order to present their views on proposed regulations?

37. Do third parties have the right to participate in agency procedures concerning approval of a charter, merger or branch applications?

38. Which of your records and documents are required by law to be kept confidential?

39. What records and documents do you keep confidential from the public as a matter of administrative practice?

40. Have you published any rules or regulations providing for the confidentiality of records and documents and reports filed with your agency?

41. What records, reports and documents are not confidential?

42. Are these reports, records, and documents readily available for public inspection?

43. Do you maintain facilities for public inspection of documents as does, for instance, the Securities and Exchange Commission?

44. Is informal *ex parte* contact between officials in your agency and parties seeking charters or other approval permitted, or are all discussion and contacts committed to writing and made a permanent part of your files?

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45. Have any employees of your office in recent years who were processing charter or merger applications been offered employment or been subsequently employed by such applicants?

46. What rules of conduct have you published with respect to agency employees?

47. Are your employees permitted to participate in union activity, including the organization of unions?

48. Do you know of any cases where employees of your agency were discriminated against because of union activity?

49. Are your employees under the "classified" civil service?

50. Do officials and employees of your agency customarily socialize with people of the banking industry?

51. I quote from a Banking and Currency Committee staff analysis entitled "Audits of Banks by Public Accountants." This was prepared for the Subcommittee on Domestic Finance and released March 22, 1966.

"The actions and policies of the three bank supervisory agencies suggest a conspiracy of concealment among the supervisory agencies and the banks which they are legally responsible for regulating. Simple requests addressed to the supervisory agencies for financial information regarding commercial banks get the standard response of 'Sorry, but that is confidential information.'"

Is there anything in S. 3158 which would cure the secrecy problem cited in this staff analysis?

V. POLITICAL ACTIVITY, RESTRAINT OF TRADE AND SELF-DEALING BY BANKS

52. In recent months, there has been much publicity about contributions by banks, bank officers, and directors to various political candidates.

Have any of the bank supervisory agencies investigated any of these public charges and, if so, what have been the findings?

53. If you have not investigated these published reports of political activities by banks and bank officials, would you explain why not?

54. Would you, under S. 3158, investigate charges of political activity by banks and bank officers?

55. To what extent has your agency investigated the use of bank funds for lobbying activities on pending legislation before state and national legislatures?

56. Would you broaden your investigation of lobbying activities and lobbying expenditures under provisions of S. 3158?

57. The pending bill provides for removal of bank officials under certain circumstances.

Would such circumstances include collusion between the bank and a customer of the bank designed to freeze out other business enterprises in a community? For example, would this legislation cover a situation where a bank official entered into an agreement with a local manufacturer to refuse loans to the manufacturer's competitor?

58. The Subcommittee on Domestic Finance of the Banking and Currency Committee is carrying out a survey of commercial bank stock ownership. One question being looked into is the extent to which banks use their trust departments to purchase bank stock, both of their competitor's as well as stock of the trustee bank.

Would you regard such purchases as a sound banking operation?

VI. COORDINATION

59. One of the serious questions that has been raised a number of times in the last few years in regard to supervision of banks by the three Federal bank supervisory agencies is the question of coordination of activity between these three agencies and between them and the Justice Department. I regard this as a serious problem. What, if anything, in the proposed legislation would help to solve this problem of coordination?

60. What would prevent agencies under this proposed law from issuing regulations which would provide different criteria for the application of this law to the three different sets of banks under the examination and supervisory authority of the three Federal bank supervisory agencies?

61. If the three agencies ever issue different criteria and different regulations for the application of this proposed law, doesn't this mean unequal treatment for the three sets of banks?

62. If one of the Federal agencies issued rather loose regulations and another issued strict, there would be discrimination in the treatment of different banks by agencies of the Federal Government. Do you think this is fair?

63. What criteria exists by which your agency will judge whether or not a "cease and desist" proceeding will be undertaken?

64. Will these criteria be published in the Federal Register?

65. How will your agency coordinate its activities under S. 3158, assuming enactment, with the other two Federal banking regulatory agencies?

66. Is it not possible for each of the agencies to use criteria which will discriminate against a bank under the jurisdiction of one of the other agencies?

67. Would it not be more appropriate to have the three banking agencies develop a single set of criteria that would be applicable to all commercial banks regardless of the individual agency to whom a given bank were responsible?

68. Would it not be more equitable to have one administrative procedure hearing in the nature of a court for all agencies involved so as to insure uniform application of the law?

VII. OVERLY COMPLEX CRITERIA IN S. 3158

69. The provision of the proposed bill, S. 3158, providing for the removal of an officer or director depends upon the interrelation of a number of factors. Before action may be taken against an officer or director, he has to have (1) violated a provision of law, rule, regulation, or final cease and desist order, or (2) engaged in an unsafe or unsound practice, or (3) breached his fiduciary duty as a director or officer, and (4) as a result of such violation or breach of duty the institution must suffer or will probably suffer substantial financial loss or other damage, or (5) the interest of depositors must be seriously prejudiced by such violations or breach, and (6) such violation, practice, or breach of duty must be one involving personal dishonesty.

Is it really necessary that this provision of the proposed law be so complex and involve the pyramiding of so many different criteria before an agency can take action?

70. Since this provision is so complex, can it be effectively administered?

71. Wouldn't it be sufficient for the bill to provide for the service of a notice of removal of an officer or director upon a finding of violation of law, rule, regulation, or final cease and desist order which involves a breach of fiduciary duty of such officer or director?

72. If this is not acceptable, what alternative less complex criteria do you recommend?

VIII. CROWN SAVINGS BANK FAILURE

73. In July and August of 1965, the Domestic Finance Subcommittee held extensive hearings into the closing of Crown Savings Bank, Newport News, Virginia. This was a state chartered institution which had operated from 1905 until its closing by the Virginia banking authorities on the recommendation of the Federal Deposit Insurance Corporation on September 4, 1964.

The hearing held by the Domestic Finance Subcommittee brought to light the fact that there were many persons of questionable character who had extensive dealings with the management of the Crown Savings Bank. Subsequent to the closing, several indictments were returned against persons involved in this case in the Federal and state courts in Virginia and Georgia. These charges included extortion, embezzlement, and mail fraud among others.

Among those who have been indicted since the Crown Savings Bank hearing before the Domestic Finance Subcommittee is the former president of that bank, LeRoy F. Ridley of Newport News, Virginia, who was indicted in Federal court in Atlanta in the winter of 1966.

Is the bill before us, some provisions of which were contained in legislative proposals that you as Chairman of the FDIC made at the time of the Crown Savings Bank investigation, in any way a response to our investigation of Crown?

74. Mr. Randall, I know you are quite familiar with this case, having testified at length before the Domestic Finance Subcommittee. In your opinion, if a law such as S. 3158 had been on the books at the time of the difficulties that were experienced by the Crown Savings Bank, would it have been used by the Federal Deposit Insurance Corporation?

75. Would this law have been effective in preventing the serious problems which eventually caused the failure of the Crown Savings Bank?

76. At the time of the investigation into the closing of the Crown Savings Bank, you reported to the Domestic Finance Subcommittee that as of June 30, 1965 there were 199 banks on the FDIC problem list. Subsequently you reported to me that this had risen as of December 31, 1965 to 223 banks, an increase of 24 in that six-month period.

Can you tell us how many banks were on the FDIC problem list as of June 30, 1966? If you cannot tell us the precise figure, do you know whether there was another increase during the last complete six-month period ending June 30, 1966?

77. I quote from the Subcommittee on Domestic Finance's staff report, dated February 21, 1966, on the investigation into the Crown Savings Bank failure:

"All of this leads to the conclusion that because of a lack of coordination and communication, a lack of vigor and investigative know-how and a narrowness of outlook on the part of the FDIC in particular and the bank supervisory agencies in general, the public is not obtaining the kind of protection in this area that it deserves."

How would the proposed legislation correct the situation described in the staff report?

78. This same staff report also states:

"It is clear that if the FDIC had acted vigorously and quickly in July of 1963, after the Virginia banking authorities examined Crown, or had acted in March of 1964, after it clearly knew that Townsend was involved with Crown Savings Bank, it could either have prevented the failure of the Crown Savings Bank or could have greatly minimized the losses to the public, to depositors, and to the insurance fund."

How would the proposed legislation serve to correct the situation set forth in this portion of the staff report?

79. I quote further from this same staff report:

"Considering the supervisory agencies' duty to protect the public interest in the operation of banks rather than merely the dollars and cents involved, they take much too narrow a view of their function. Instead of taking a vigorous and active investigative approach to supervising and examining banks, trying to relate what happens in one part of the system to what happens in another part of the system, continually being aware of the activities of persons who have records of causing difficulties in banks, and looking into who the banks and their officers are dealing with and for what purpose, these agencies seem content to merely add up columns of figures to see if they balance with other columns of figures.

"If the FDIC and the other agencies took this more vigorous approach, they would truly be protecting the public by uncovering bank activities which support illegal and other questionable activities even though there is no immediate danger of dollar loss to the insurance fund."

How will the proposed legislation correct this situation?

80. In the conclusions of this staff report, it is stated:

"In short, the people who are carrying on activities threatening the soundness of our banking system are taking full advantage of the 'jet age' of rapid communications and rapid transportation over wide areas, while the bank supervisory agencies seem still to be combating such activities in the same old ways developed 30, 40, or 50 years ago."

Is there anything in the pending legislation which would help you to modernize your approaches to bank supervision?

81. This same report calls attention to the lack of coordination between Federal bank supervisory agencies themselves, as well as a lack of coordination among Federal and state bank supervisory agencies and law enforcement agencies.

Is there anything in S. 3158 which would cure this lack of coordination which is cited as a major cause for the serious consequences resulting from the failure of the Crown Savings Bank?

82. On September 2, 1966, the Washington Post carried a detailed story concerning the FDIC's decision to insure an Arkansas bank despite the unanimous objections of the FDIC's own investigators. This publicity raised questions in the minds of many about the FDIC's ability and willingness to pursue bank regulation in the public interest. Is the Arkansas case a pattern at FDIC, and is it one which the agency could be expected to follow in enforcing the provisions of S. 3158?

83. In this Arkansas case, the question of secrecy, earlier cited in the staff analysis of the Domestic Finance Subcommittee, is brought up again. The Washington Post story states:

"The whole affair is 'classified' so far as FDIC is concerned. Chairman Randall won't even confirm that he voted to insure the bank. His position is that the internal workings of FDIC are 'confidential and privileged'."

The story goes on to say that this is consistent with the FDIC attitude over the years. It regards its business, the Washington Post says, as a "private affair, off-limits to public scrutiny." The article also states that:

"Congressional Committees and prying bookkeepers from the Bureau of the Budget rarely intrude on its privacy or ask questions about the \$3 billion in assets it has acquired over the years."

Would the FDIC carry out the provisions of S. 3158 in this type of backroom secrecy?

(Following is the reply from the Federal Reserve System. The replies from the Comptroller of the Currency and Federal Deposit Insurance Corporation had not been received in time for publication, and when received may be found in the committee files.)

BOARD OF GOVERNORS
OF THE FEDERAL RESERVE SYSTEM,
Washington, September 28, 1966.

HON. WRIGHT PATMAN,
*Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: The following answers are furnished in response to the 72 questions enclosed with your letter of September 19, 1966, to which you indicated a prompt reply is needed in connection with consideration of S. 3158.

"ALLOCATION OF CREDIT"

"1. Under our fractional reserve monetary system our commercial banks create the vast bulk of the nation's money supply. Commercial banks enjoy a virtual monopoly on the creation of money and the allocation of credit through this mechanism.

"What mechanism exists, if any, to insure prudent, effective and nondiscriminatory operation of this privately controlled system?"

Answer: In allocating credit in our economy, primary reliance is placed on competitive enterprise operating through a banking structure that features many thousands of banks competing with each other, with other financial institutions, and with the money and capital markets. Federal and State supervisory agencies help to ensure sound operations and to maintain a structure in which competition can spur more effective banking services. The Federal Reserve System endeavors to foster credit conditions under which the overall supply of credit and money can sustain economic growth without straining the capacity of the economy. Allocation of that credit among particular borrowers is best accomplished by market forces, we believe, although we recognize that at times special efforts are needed to prevent a disproportionate share of total bank credit from flowing into one particular channel or another, e.g., business loans today, as indicated by the enclosed press release of September 1.

"2. What public controls exist by law or regulation to prevent undue concentration of credit channeled to large corporate customers of commercial banks with have close ties to such banks through interlocking directorships or other means?"

Answer: The Bank Merger Act and the Bank Holding Company Act and the procedures established under them are designed to preserve competition among banks and prevent undue banking concentration, thereby guarding against undue concentration of credit. Other provisions aimed primarily at maintaining sound

banks, such as the limits on loans by banks to any one borrower, may incidentally also work against such concentration.

"3. On the other hand, what guarantees exist either through law or regulation that the credit needs of small business are met by commercial banks?"

Answer: No law or regulation guarantees that any particular borrower, large or small, will get a loan from a bank. Since most banks are small, they lend only to relatively small businesses. In recognition of the fact that smaller businesses may at times, however, have greater difficulty in obtaining funds than do larger businesses, the Congress has established special arrangements under the Small Business Act to help meet the credit needs of small businesses, by direct loans as well as by encouraging loans to small business by commercial banks and small business investment companies.

"4. Since the power to create money is sovereign—a prerogative of the public—what rights of appeal, if any, does a person have who is denied credit by a bank?"

Answer: No legal right of appeal exists, although a practical one does—the right to go to alternative sources of funds.

"5. Furnish the Committee whatever information available concerning the contention that large borrowers have a large portion of the available credit allocated to them."

Answer: One source of detailed information on this subject is the study made by the Board in 1958, a copy of which is enclosed. In addition, the Quarterly Financial Reports for Manufacturing Corporations prepared by the Federal Trade Commission and the Securities and Exchange Commission contain information on outstanding loans from banks by asset size of corporation. Over the current business upswing, it should be observed, smaller banks, which lend primarily to smaller businesses, have increased their commercial and industrial loans at a much faster rate than large banks. For example, between December 31, 1960 and December 31, 1965, these loans rose 59.5 per cent at reserve city banks compared with 73.5 per cent at country banks and 94.3 per cent at nonmember banks.

"6. Also furnish the Committee copies of all complaints from small business and individual borrowers you have received over the last five years."

Answer: While we have received letters commenting on the restrictive effects of monetary policy, incoming mail indicates a wider concern about developing inflationary pressures.

"LAWS TO PROTECT THE PUBLIC INTEREST"

"7. Our commercial banking system indisputably is a public service industry, particularly as a result of its exercise of the public authority to create money. As such it is imperative that our banking laws protect the public right of access to available sources of credit and also protect the public's rights and interests as depositors.

"What changes or additions to the present statutes, in your opinion, are necessary to protect the public interest in this regard?"

Answer: Recommendations for such amendments have been submitted to you from time to time. One of the most important of these is S. 3158.

"8. What shortcomings are you aware of in your agency and/or sister agencies in administering the banking laws to serve the public?"

Answer: We believe that the three Federal supervisory agencies are dedicated to the public interest and striving to carry out their responsibilities to the best of their ability. The extent to which these efforts have succeeded is better left to others to judge.

"9. Does there exist any conflict between your agency and other Federal or state banking supervisory agencies, either as regards existing law or regulations?"

Answer: As you know, there are a number of areas in which we have been unable to reach agreement with the Comptroller of the Currency, and we disagree with the Federal Deposit Insurance Corporation as to whether absorption of exchange charges constitutes the payment of interest on deposits.

"10. What criminal penalties are provided for violations of the banking laws your agency administers?"

Answer: Criminal penalties for violations of the laws administered by the Reserve are listed below:

Subject	Provision of U.S. Code	Penalty
Foreign banking corporations.....	Title 12, § 617.....	Prison term of 1 to 5 years, or fine of \$1,000 to \$5,000 or both.
	Title 12, § 630.....	Prison term of 2 to 10 years, plus fine up to \$5,000.
	Title 12, § 631.....	Prison term of up to 5 years, and fine up to \$10,000.
Director or officer serving after removal.	Title 12, § 77.....	Prison term of up to 5 years, or fine of up to \$5,000, or both.
Bank Holding Company Act.....	Title 12, § 1847.....	Fine up to \$1,000 per day for violation of Board's order or regulation; prison term up to 1 year, or fine up to \$10,000, or both, for violation of any provision of the Act; officers, employees, <i>et al.</i> , of a holding company are subject to prison term of up to 5 years, or fine of up to \$5,000, or both, for false entries, per Title 18, § 1005.
Bank securities registration, reports, etc., margin requirements; borrowing to purchase registered securities.	Title 15, § 78ff.....	Prison term of up to 2 years, or fine of up to \$10,000, or both, except a fine not exceeding \$500,000 may be imposed against an exchange.
False entry to deceive examining authority.	Title 18, § 1005.....	Prison term of up to 5 years, or fine of up to \$5,000, or both.
False statement or report to influence action of Reserve Bank on any application, loan, discount, etc.	Title 18, § 1014.....	Prison term of up to 2 years, or fine of up to \$5,000, or both.
Offer of fee for loan from Reserve Bank; acceptance of such offer.	Title 18, §§ 214, 215.....	Prison term of up to 1 year, or fine of up to \$5,000, or both.
Offer of loan or gratuity to examiner; acceptance by examiner.	Title 18, §§ 212, 213.....	Prison term of up to 1 year, or fine of up to \$5,000, or both, plus a fine equal to the sum loaned or given.
Wrongful issuance of currency by Federal Reserve Agent, <i>et al.</i>	Title 18, § 334.....	Prison term of up to 5 years, or fine of up to \$5,000, or both.
False certification of check by Reserve Bank employee.	Title 18, § 1004.....	Prison term of up to 5 years, or fine of up to \$5,000, or both.
Embezzlement by Reserve Bank employee.	Title 18, § 656.....	Prison term of up to 5 years, or fine of up to \$5,000, or both; but if less than \$100, prison term of up to 1 year, or fine of up to \$1,000, or both.
False representation of membership in Reserve System.	Title 18, § 709.....	Prison term of up to 1 year, or fine of up to \$1,000, or both, for individuals; fine of up to \$1,000 for business entities.
Theft by examiner.....	Title 18, § 656.....	Prison term of up to 5 years, or fine of up to \$5,000, or both; but if less than \$100, prison term of up to 1 year, or fine of up to \$1,000, or both; disqualified as examiner.
Wrongful disclosure of information by examiner; performance by examiner of service for bank.	Title 18, §§ 1906, 1909.....	Prison term of up to 1 year, or fine of up to \$5,000, or both.

"11. When a bank examiner discovers a suspected criminal violation, what formal reporting procedures are followed?"

Answer: Examiners for the Federal Reserve Banks are under instructions to report immediately all apparent or possible criminal violations which they discover to the vice president in charge of examinations of their respective Reserve Banks. Upon receipt of the details, the Reserve Banks report the offense to the local United States Attorney and forward copies of the reports to the Board's offices in Washington. Copies received by the Board are forwarded to the Department of Justice.

"12. Are all suspected criminal violations immediately reported to the U.S. Attorney, the Federal Bureau of Investigation, and the Department of Justice?"

Answer: Yes; however, the Reserve Banks do not report misdemeanors (for example, defalcations of \$100 or less) if in their judgment it would not be desirable or serve any useful purpose to do so. Each Reserve Bank is required to preserve in its files a complete record of the facts and circumstances of each case not reported.

"13. How many criminal violations were reported by your agency in 1965?"

Answer: In 1965, the System reported to the Department of Justice 865 possible criminal violations involving State member banks. This included 94 robberies and 11 cases of larceny committed by persons other than bank employees.

"14. How many indictments and convictions were obtained on the basis of these reports?"

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Answer: The System does not attempt to follow each offense reported to determine the final results of indictment or prosecution and, as a consequence, this information cannot be supplied.

"15. In 1965, how many officers, directors or employees of insured banks were removed from office for conviction of a criminal offense involving dishonesty or breach of trust? (See 12 U.S.C. 1829)"

Answer: Presumably, the question refers to that section of the Federal Deposit Insurance Act which provides that "Except with the written consent of the Corporation, no person shall serve as a director, officer, or employee of an insured bank who has been convicted, or who is hereafter convicted, of any criminal offense involving dishonesty or a breach of trust." As you know, this statute does not provide for removal of such persons and is directed primarily toward prevention of their employment by insured banks. In actual practice persons guilty of a criminal offense or even accused of a breach of trust frequently resign immediately from the bank. We know of no instance where it has been necessary to "remove" any officer, director, or employee so involved in the sense of ordering him to cease to serve. In the event an examination of a State member bank disclosed an officer, director, or employee in the service of the bank in violation of law, immediate action for their removal would, of course, be initiated by the System.

"16. Are you aware of any evidence of 'organized crime' in banking? If so, state the extent of this involvement."

Answer: We have no evidence of extensive penetration of banking by "organized crime" although there have been occasional instances in which persons with criminal backgrounds attempted to misuse the assets of banks, such as those on which your Committee and the Senate Permanent Subcommittee on Investigations have recently held hearings.

"17. What checks are made by your agency to determine whether or not banks under your jurisdiction have been violating state usury laws?"

Answer: Our examination report form requires that the examiners ascertain the usual, highest, and lowest rates of interest on loans. Any violation of usury laws detected in the course of an examination is brought to the attention of the bank and a copy of the examination report is furnished to the State Banking Department. Since State law is involved, the State is primarily responsible for its enforcement.

"18. Cite all specific instances or cases in the last five years where action has been taken by your agency to protect the public interest as regards commercial banking operations under your jurisdiction."

Answer: The Board naturally believes that it is exercising its authority in the public interest at all times. We provide the Congress with an account of our actions each year in the form of an annual report.

"EXAMINATIONS, AUDITS, AND REPORTS"

"19. S. 3158, the so-called 'cease and desist' legislation, if enacted, would require adequate examinations, audits, and reports on commercial banks.

"How many field examiners does your agency employ, and how often are the banks under your supervisory jurisdiction examined by your agency every year?"

Answer: The question evidently refers to examinations of State member banks, which are made by examiners employed by the Federal Reserve Banks. This examination force averages about 450 men. State member banks are examined once a year, except where special circumstances call for additional examinations.

"20. Describe in detail the examination of bank trust departments."

Answer: There are enclosed a copy of the trust report of examination and a copy of the trust manual used by examiners for the Federal Reserve Banks. It is believed these will provide you with the procedures followed in the examination of bank trust departments.

"21. How many banks under your supervisory jurisdiction are audited each year by independent public accounting firms?"

Answer: We have no information on this question to add to that already obtained by your Committee's survey.

"22. What authority do you have to require independent audits of banks?"

Answer: No specific authority, although there is implied authority under some circumstances.

"23. Do you feel that there is need for independent audits of all commercial banks under your jurisdiction?"

Answer: The Board's views were furnished in our letter of July 28, 1965, a copy of which is enclosed.

"24. What reports are required to be filed with your agency by banks under your jurisdiction other than ordinary examination reports?"

Answer: State member banks are required to submit reports of conditions (Form 105), reports of earnings and dividends (Form 107), and reports of changes in management or stockholdings (pursuant to Public Law 88-593). All member banks are required to furnish information needed for computation of required reserves (Form 414). Reports are also required from affiliates of State member banks (Form 220) and foreign banking corporations (Form 314). State member banks subject to the requirements of the 1964 amendments of the Securities Exchange Act of 1934 are also required to file annual reports (Form F-2), quarterly reports (Form F-4), and special reports needed to keep information previously filed on a current basis (Form F-3). In addition, a number of State member banks voluntarily cooperate with the Board by furnishing statistical information, both on a regular basis and in response to special surveys.

Question 25 is identical to question 24.

"26. How many reports did your agency receive in 1965 pursuant to Public Law 88-593, requiring notification to Federal banking agencies of changes in control of insured banks and loans secured by 25% or more of the voting stock of insured banks?"

Answer: During 1965, 57 reports were received pursuant to Public Law 88-593 indicating 35 changes in control of State member banks and 22 loans extended each of which were secured by 25 percent or more of the voting stock of a State member bank.

"27. What rules or regulations have you promulgated to protect the interests of minority stockholders, and what comments do you care to make with respect to your experience under the Securities Acts Amendments of 1964, requiring certain commercial banks to make public information as to their operations?"

Answer: Enclosed is a copy of Regulation F, and the press release announcing its issuance. You will notice on page 4 of the press release reference to a deferred decision on provisions offering additional protection to minority stockholders. The Board expects to publish soon proposed revisions to the regulation incorporating such provisions. Experience thus far with the legislation indicates it is operating reasonably well, and we have no recommendations for changes in the statute at this time.

"28. In the two years since enactment of the Securities Acts Amendments, have you achieved your avowed goal of uniform financial reporting by commercial banks under your supervision?"

Answer: This question appears to be based on a misunderstanding. Uniform financial reporting by commercial banks subject to Federal Reserve supervision is not an "avowed goal" of the Board. As a part of its Regulation F, "Securities of Member State Banks" (12 CFR 206), the Board dealt with principles of financial reporting and prescribed certain general requirements with respect to such matters as accrual accounting, valuation and amortization of fixed assets, and consolidation of the financial statements of banks and certain of their subsidiaries. The Board's objective in this respect was and is to achieve, as far as practicable, *comparability* of financial statements of banks, in order that the investing public may make informed investment decisions. To a great extent, the Regulation and administration thereof have achieved such comparability. It must be borne in mind, of course, that more than 90 per cent of all State banks are not subject to the requirements of Regulation F or of the comparable regulations of the Federal Deposit Insurance Corporation.

"29. What additional statutory authority is required for you to carry out your responsibility with respect to examination, audit, and reporting requirements?"

Answer: As indicated in the letter referred to in answer to question 23, we feel there would be real merit in legislation specifically authorizing the Federal bank supervisory agencies to require outside audits in appropriate cases such as where internal controls are inadequate or have broken down. Enactment of S. 3158 would fill the need for "intermediate" powers with respect to supervision of banks.

"AGENCY PROCEDURE—RIGHTS OF PARTIES"

"30. What formal procedures are available as a matter of right to applicants for new charters, mergers or branches?"

"31. Are record hearings available?"

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Answer: Refer to pages 24-29 of the Board's Rules of Organization and Procedure, a copy of which is enclosed. See particularly pages 24-26.

"32. Is judicial review available?"

Answer: Judicial review of Board procedures relating to and actions on applications for new charters, mergers, or branches is available. The sole chartering power of the Board exists with respect to corporations authorized to do foreign banking or financial business pursuant to section 25(a) of the Federal Reserve Act (12 U.S.C. 611 et seq.). Pursuant to section 25(a), the Board of Governors is empowered to issue a permit authorizing the applicant corporation to begin business. The authorizing statute contains no provision for judicial review. The Board interprets the judicial review provisions of section 10 of the Administrative Procedure Act as being applicable to the aforementioned function. Regarding merger and branch applications, while neither the Bank Merger Act (12 U.S.C. 1828(c) as amended by Public Law 89-356, February 21, 1966) nor the branch approval statute (12 U.S.C. 321) provides for judicial review of Board action, the Board has considered the judicial review provisions of the Administrative Procedure Act as being applicable to Board procedures as to both. Further, the Bank Merger Act contains a provision (12 U.S.C. 1828(c) (7) (A) through (D)) for the initiation by the United States Attorney General of judicial proceedings under the antitrust laws. In any such action, the trial court is authorized to review *de novo* the issues presented. Such a proceeding, of course, would constitute judicial review of Board action on a given merger application. Illustrative of the applicability of the judicial review provisions of the Administrative Procedure Act to applications for the establishment of branches by State member banks is the case of *Old Kent Bank and Trust Company v. Wm. McC. Martin, Jr., et al.*, CA No. 1993-58, U.S.D.C. D.C.

"33. What provisions of the Administrative Procedure Act apply to your agency procedures?"

Answer: All provisions of the Administrative Procedure Act, mandatory, permissive, or exclusionary, are considered to be applicable to all procedures adopted by the Board in relation to its functions and operations.

"34. Are all requirements for the granting of charters, mergers and branches, or other actions published as a matter of record so that applicants may know precisely what is required to obtain approval?"

"35. Are all such regulations and requirements published in the Federal Register?"

Answer: Such regulations and requirements are set forth in the Board's Rules of Organization and Procedure, which is published in the Federal Register. Additional information is set forth both in specific applicable regulations, which are published in the Federal Register, and in application forms. Although such forms are not set forth in Board's Rules of Procedure, the Rules include a list of such forms and a statement that they are available at the Reserve Banks.

"36. Are all interested parties invited to comment on proposed regulations and are public hearings always permitted parties in order to present their views on proposed regulations?"

"37. Do third parties have the right to participate in agency procedures concerning approval of a charter, merger or branch applications?"

Answer: Refer to pages 24-29 of the Board's Rules of Organization and Procedure, a copy of which is enclosed.

"38. Which of your records and documents are required by law to be kept confidential?"

Answer: No provision of law expressly requires the Board to keep any document confidential. There are special provisions relating to confidentiality of the examination process, such as section 1906 of title 18 of the United States Code and section 3(e) (8) of the Administrative Procedure Act, as amended by Public Law 89-487. Section 30 of the Banking Act of 1933 requires confidentiality in connection with removal proceedings.

"39. What records and documents do you keep confidential from the public as a matter of administrative practice?"

"40. Have you published any rules or regulations providing for the confidentiality of records and documents and reports filed with your agency?"

"41. What records, reports and documents are not confidential?"

"42. Are these reports, records, and documents readily available for public inspection?"

Answer: The answers to these questions are set forth in the Board's Rules of Organization and Procedure, a copy of which is enclosed, at pages 13-19.

"43. Do you maintain facilities for public inspection of documents as does, for instance, the Securities and Exchange Commission?"

Answer: Facilities are maintained for public inspection of registration statements and reports filed by State-chartered insured banks, both member and non-member, under the 1964 amendments to the Securities Exchange Act. Requests to examine other papers available for inspection are not received often enough to warrant maintenance of special facilities for that purpose, but such facilities are made available as needed.

"44. Is informal *ex parte* contact between officials in your agency and parties seeking charters or other approval permitted, or are all discussion and contacts committed to writing and made a permanent part of your files?"

Answer: In many instances informal contact between Board personnel and parties seeking Board approval of proposed transactions precedes formal submission of an application. In such cases, the potential applicants are directed to published sources of information concerning Board requirements with respect to such applications. To the extent warranted, written notations or memoranda are made of such informal contacts. Once an application has been filed, discussion and contacts between Board officials and applicants are, within reasonable limits, committed to writing and made a permanent part of our files.

"45. Have any employees of your office in recent years who were processing charter or merger applications been offered employment or been subsequently employed by such applicants?"

Answer: The Board cannot, of course, be certain that all offers of employment of the nature described have come to its attention. The Board is unaware of an instance where an offer of employment to a Board employee in the position above described has resulted in employment by such an applicant. The Board understands that a former member of the Board's legal staff was retained, subsequent to his return to private practice, by such an applicant. As far as the Board is aware, in no instance of employment or offer of employment has there been presented a possible conflict of interest.

"46. What rules of conduct have you published with respect to agency employees?"

Answer: Rules governing "Employee Responsibilities and Conduct" were published in the Federal Register on March 5, 1966. A copy is enclosed.

"47. Are your employees permitted to participate in union activity, including the organization of unions?"

Answer: Yes.

"48. Do you know of any cases where employees of your agency were discriminated against because of union activity?"

Answer: No.

"49. Are your employees under the "classified" civil service?"

Answer: No.

"50. Do officials and employees of your agency customarily socialize with people of the banking industry?"

Answer: Board officials and employees often attend social gatherings at which bankers are present.

"51. I quote from a Banking and Currency Committee staff analysis entitled 'Audits of Banks by Public Accountants.' This was prepared for the Subcommittee on Domestic Finance and released March 22, 1966:

"The actions and policies of the three bank supervisory agencies suggest a conspiracy of concealment among the supervisory agencies and the banks which they are legally responsible for regulating. Simple requests addressed to the supervisory agencies for financial information regarding commercial banks get the standard response of 'Sorry, but that is confidential information.'"

"Is there anything in S. 3158 which would cure the secrecy problem cited in this staff analysis?"

Answer: Such requests are not met with a standard response that the information is confidential. Some requests are, where the information requested is confidential. Nothing in S. 3158 would affect this situation.

"POLITICAL ACTIVITY, RESTRAINT OF TRADE AND SELF-DEALING BY BANKS"

"52. In recent months, there has been much publicity about contributions by banks, bank officers, and directors to various political candidates.

"Have any of the bank supervisory agencies investigated any of these public charges and, if so, what have been the findings?"

Answer: No such investigation has been made by the Board.

"53. If you have not investigated these published reports of political activities by banks and bank officials, would you explain why not?"

Answer: Nothing has come to the attention of the Board that appeared to warrant any special investigation. Federal law does not preclude individuals from engaging in political activities simply because they are connected with banks. Action by the Board would be authorized only where a State member bank has made a contribution to a political party or candidate in violation of 18 U.S.C. 610. Any such violation disclosed in the examination of a State member bank would be reported as described in the answer to question 11.

"54. Would you, under S. 3158, investigate charges of political activity by banks and bank officers?"

Answer: Under any applicable statute, including S. 3158, the Board would initiate appropriate investigation of charges of prohibited political activity by a member bank.

"55. To what extent has your agency investigated the use of bank funds for lobbying activities on pending legislation before state and national legislatures?"

Answer: No such investigation has been made.

"56. Would you broaden your investigation of lobbying activities and lobbying expenditures under provisions of S. 3158?"

Answer: No.

"57. The pending bill provides for removal of bank officials under certain circumstances.

"Would such circumstances include collusion between the bank and a customer of the bank designed to freeze out other business enterprises in a community? For example, would this legislation cover a situation where a bank official entered into an agreement with a local manufacturer to refuse loans to the manufacturer's competitor?"

Answer: Suspension or removal orders could be issued only in cases involving, among other things, personal dishonesty; this element would not seem to be present in the example given.

"58. The Subcommittee on Domestic Finance of the Banking and Currency Committee is carrying out a survey of commercial bank stock ownership. One question being looked into is the extent to which banks use their trust departments to purchase bank stock, both of their competitor's as well as stock of the trustee bank.

"Would you regard such purchases as a sound banking operation?"

Answer: We would not regard all such purchases as unsound per se. It would depend on all the circumstances and conditions surrounding the transaction. As indicated by the Board's former regulation on the exercise of trust powers by national banks (which was terminated September 28, 1962, when authority to issue regulations on that subject was transferred to the Comptroller of the Currency), the Board believes that purchase of a bank's own stock by its trust department should be limited to cases where it is expressly required by the trust instrument or specifically authorized by court order.

"COORDINATION"

"59. One of the serious questions that has been raised a number of times in the last few years in regard to supervision of banks by the three Federal bank supervisory agencies is the question of coordination of activity between these three agencies and between them and the Justice Department. I regard this as a serious problem.

"What, if anything, in the proposed legislation would help to solve this problem of coordination?"

Answer: Nothing.

"60. What would prevent agencies under this proposed law from issuing regulations which would provide different criteria for the application of this law to the three different sets of banks under the examination and supervisory authority of the three Federal bank supervisory agencies?"

Answer: See answer to question 65.

"61. If the three agencies ever issue different criteria and different regulations for the application of this proposed law, doesn't this mean unequal treatment for the three sets of banks?"

Answer: Yes.

"62. If one of the Federal agencies issued rather loose regulations and another issued strict, there would be discrimination in the treatment of different banks by agencies of the Federal Government. Do you think this is fair?"

Answer: No.

"63. What criteria exists by which your agency will judge whether or not a 'cease and desist' proceeding will be undertaken?"

Answer: At the present time, the only criteria are those specified in the bill.

"64. Will these criteria be published in the Federal Register?"

Answer: It seems unlikely that any formula could be devised for publication that would cover all circumstances. In fact, one of the arguments that has been advanced in favor of the bill is that it will enable problem cases to be solved on an individual basis, thereby lessening the need for a proliferation of published regulations.

"65. How will your agency coordinate its activities under S. 3158, assuming enactment, with the other two Federal banking regulatory agencies?"

Answer: In the same way that we now endeavor to coordinate our other activities, that is, through discussions and conferences between Board members and staff and the heads and staffs of other agencies, as well as through the Coordinating Committee on Bank Regulation. Obviously, this process will not assure complete agreement.

"66. Is it not possible for each of the agencies to use criteria which will discriminate against a bank under the jurisdiction of one of the other agencies?"

Answer: Yes.

"67. Would it not be more appropriate to have the three banking agencies develop a single set of criteria that would be applicable to all commercial banks regardless of the individual agency to whom a given bank were responsible?"

Answer: This is a most desirable goal and we will continue our sincere efforts to achieve it. Under the present statutory division of responsibilities, however, there can be no guarantee that the effort will succeed.

"68. Would it not be more equitable to have one administrative procedure hearing in the nature of a court for all agencies involved so as to insure uniform application of the law?"

Answer: Uniform application of the law can best be assured, in our judgment, through unification of responsibility for administering the law.

"OVERLY COMPLEX CRITERIA IN S. 3158"

"69. The provision of the proposed bill, S. 3158, providing for the removal of an officer or director depends upon the interrelation of a number of factors. Before action may be taken against an officer or director, he has to have (1) violated a provision of law, rule, regulation, or final cease and desist order, or (2) engaged in an unsafe or unsound practice, or (3) breached his fiduciary duty as a director or officer, *and* (4) as a result of such violation or breach of duty the institution must suffer or will probably suffer substantial financial loss or other damage, or (5) the interest of depositors must be seriously prejudiced by such violations or breach, *and* (6) such violation, practice, or breach of duty must be one involving personal dishonesty.

"Is it really necessary that this provision of the proposed law be so complex and involve the pyramiding of so many different criteria before an agency can take action?"

Answer: No. Like many statutory provisions, this is the product of much negotiation among interested parties involving a number of compromises. One such compromise is the provision limiting application to cases involving personal dishonesty. The Board has reservations about this limitation, but has accepted it in the belief that the suspension and removal provisions of the bill are less important, insofar as State member banks are concerned, than the provisions regarding cease and desist orders, and that any deficiencies in the former are outweighed by the benefits to be gained from the latter.

"70. Since this provision is so complex, can it be effectively administered?"

Answer: We believe that it can, although it is likely to be invoked rarely, insofar as State member banks are concerned.

"71. Wouldn't it be sufficient for the bill to provide for the service of a notice of removal on an officer or director upon a finding of violation of law, rule, regulation, or final cease and desist order which involves a breach of fiduciary duty of such officer or director?"

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Answer: This simpler provision would, of course, greatly expand the Board's authority. Naturally, we believe that we would administer it with discretion and would not abuse it. Just as naturally, the institutions that would be subject to it have much greater doubts about how it would be administered and oppose giving the Board that much leeway.

"72. If this is not acceptable, what alternative less complex criteria do you recommend?"

Answer: As indicated above, the simpler provision would be acceptable to the Board.

Sincerely yours,

WM. MCCL. MARTIN, JR.

THE UNDER SECRETARY OF THE TREASURY,
Washington, D.C., September 29, 1966.

HON. WRIGHT PATMAN,
*Chairman, Committee on Banking and Currency,
House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: This has further reference to your letter of September 15, 1966, requesting the particular Government trust funds participating in the allotment of \$250 million to Government investment accounts of the \$650 million of 6¼% Series F 1967 Federal Home Loan Banks Consolidated Bonds dated September 26, 1966 and maturing September 27, 1967.

Each of the following listed Government trust funds purchased \$50 million face amount of this issue of Federal Home Loan Bank obligations:

Federal Old-Age and Survivors Insurance Trust Fund.
Federal Disability Insurance Trust Fund.
Civil Service Retirement and Disability Fund.
Unemployment Trust Fund.
Railroad Retirement Account.

Sincerely yours,

(Signed) JOSEPH W. BARR.

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